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17 I N D E X

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19		<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u> <u>RECROSS</u>
20	Todd R. Pajonas	4	57	98 --

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1 P R O C E E D I N G S

2

3 THE CLERK: Criminal number 3:08CR00132-01, United
4 States of America versus Edward Hugh Okun. Mr. Michael Dry,
5 Mr. Brigham Cannon, and Ms. Jessica A. Brumberg represent the
6 United States. Mr. Robert J. Wagner, Carolyn V. Grady, and Mr.
7 Barry J. Pollack represent the defendant. Are counsel ready to
8 proceed?

9 MR. DRY: United States is ready to proceed.

10 MR. POLLACK: We are ready. Mr. Wagner is in another
11 proceeding. He'll be here shortly, but we can go ahead.

12 THE COURT: All right, sir. Thank you very much.
13 Good morning, ladies and gentlemen. Good morning, counsel.
14 All right, Mr. Pajonas is on the witness stand.

15 MR. DRY: That's correct, Your Honor. The United
16 States would recall Mr. Todd Pajonas to the stand.

17

18 **TODD R. PAJONAS,**
19 a witness, called by the United States, having been
20 previously duly sworn, testified as follows:

21

22 THE COURT: All right, Mr. Pajonas, I remind you you
23 are under the same oath that you took yesterday.

24 THE WITNESS: Thank you.

25

1 DIRECT EXAMINATION

2 BY MR. DRY: (Resuming)

3 Q Mr. Pajonas, I believe when we concluded yesterday, we had
4 just finished talking about National Exchange Services. Was
5 there another qualified intermediary company after National
6 Exchange Services was bought in June of 2006 that was acquired?

7 A I believe that that was IXG.

8 Q Sir, IXG is an acronym for?

9 A Investment Exchange Group.

10 Q And I'd like to bring up Government's Exhibit 65, please.
11 Sir, did you receive this e-mail on the bottom, and did you
12 send the response?

13 A It's not up yet. Here it is. Yes, I did.

14 MR. DRY: I'd like to introduce Government's Exhibit
15 65 into evidence.

16 THE COURT: Any objection?

17 MS. GRADY: No objection.

18 THE COURT: Admitted.

19

20 (Government's Exhibit 65 admitted.)

21

22 Q Sir, can you tell the members of the jury what this bottom
23 e-mail was in reference to?

24 A Well, they are asking for \$6 million of client funds to
25 purchase the IXG company out of Denver, Colorado.

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1 Q And Ms. Coleman says, will return the funds today. From
2 your conversations with Ms. Coleman and Mr. Okun, what was your
3 understanding of how that was going to occur?

4 A It was going to come back from client funds from IXG.

5 THE COURT: What?

6 MS. GRADY: Nothing, Judge. Just clearing my throat.

7 THE COURT: Sorry.

8 Q I'd like to now show you Government's Exhibit 66. This is
9 an e-mail from Ms. Coleman to yourself courtesy copying Edward
10 Okun; is that correct?

11 A That's right.

12 MR. DRY: I'd like to admit Government's Exhibit 66
13 into evidence, please.

14 MS. GRADY: That's fine. No objection, Your Honor.

15 THE COURT: Admitted.

16

17 (Government's Exhibit 66 admitted.)

18

19 Q Sir, what is -- this is the same day as Government's
20 Exhibit 65. What is the \$7 million in reference to?

21 A Again, I believe it's that they are needing all that money
22 to purchase IXG.

23 MS. GRADY: Judge, I'm going to object as to who the
24 "they" is.

25 THE COURT: Can you clarify, please.

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1 MS. GRADY: Clarify who the conversation was with.

2 He keeps using "they."

3 Q At this time frame, Ms. Coleman is the one that's asking
4 for another million dollars; is that correct?

5 A That's correct.

6 Q Okay. Did you ultimately wire transfer funds for the
7 purchase -- I'm sorry, SOS client funds for the purchase of
8 IXG?

9 A I did.

10 Q Were those funds returned to you almost immediately after
11 you wired them?

12 A Yes.

13 Q What was your understanding of how those funds were
14 repaid?

15 MS. GRADY: I'm going to object unless he has
16 firsthand knowledge, Judge. He didn't send the wire, he
17 doesn't know firsthand.

18 THE COURT: Well, that's two different issues, so why
19 don't you lay a foundation.

20 Q You testified that the money came back almost immediately
21 after you sent the six million; correct?

22 A That's correct.

23 Q From what you -- from your conversations -- from what you
24 could observe from the source of the funds, where did that
25 money come from?

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8

1 A Came from IXG client funds.

2 MS. GRADY: Again, I'm going to object, Your Honor.

3 MR. DRY: She can cross-examine Mr. Pajonas about how
4 he knows that, Your Honor.

5 THE COURT: Actually, I think probably the
6 establishment of a foundation lies with the questioner. At
7 least that's what the obligation usually is. Would you mind
8 doing it or not so I can determine whether her objection to the
9 substantive question is appropriate or not?

10 Q Did you have a specific conversation with Ms. Coleman
11 regarding how she paid the funds back?

12 A Both Ms. Coleman and with Mr. Okun.

13 Q And from your conversation with Ms. Coleman, how were the
14 funds paid back?

15 A They represented to me that they needed the funds to buy
16 the company, and once the company was purchased, they would use
17 the funds that IXG was holding to repay the monies that I had
18 advanced.

19 Q That was both Mr. Okun and Ms. Coleman?

20 A Yes.

21 Q Turning your attention to Government's Exhibit 69, you had
22 an opportunity to review this e-mail prior to your testimony
23 today?

24 A I have.

25 Q This was -- the e-mail at the bottom was an e-mail you

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1 sent to Mr. Okun and Ms. Coleman; is that correct?

2 A That's correct.

3 MR. DRY: And at this time, I'd like to admit
4 Government's Exhibit 69 into evidence.

5 THE COURT: Any objection?

6 MS. GRADY: No objection, Your Honor.

7 THE COURT: Admitted.

8

9 (Government's Exhibit 69 admitted.)

10

11 Q This was the day after IXG was purchased?

12 A That's correct.

13 Q Why did you -- if you could scroll down, please. Why did
14 you send this e-mail?

15 A I was very upset. I had had a big disagreement with Ed
16 Okun, and, you know, after getting off the phone, I thought
17 about a few things and wanted to document it and sent him an
18 e-mail regarding our conversation.

19 Q When did that conversation with Mr. Okun occur?

20 A It happened either earlier that day or the day before. It
21 was very recent to this e-mail.

22 Q Okay. Can you please read bullet point one for me,
23 please?

24 A Sure. First off, I am calm, very, very calm. I'm also
25 very, very concerned but calm.

1 Q Why were you writing that?

2 A Well, because at this point, I had been complaining and
3 arguing so much about the way the company was being run that it
4 was -- Mr. Okun was trying to tell me that I was irrational and
5 that everything was fine and trying to tell me that I was way
6 too excited, that this was not a problem. And I felt that he
7 was trying to marginalize me by telling me that I was making
8 too much of the problem.

9 Q Going down to bullet point number three, please. Picking
10 up with the "we have been working hard," can you please just
11 read that sentence?

12 A Sure. We have been working hard for months now to figure
13 out exactly how much money is owed by IPofA and where our cash
14 position is.

15 Q And why had it been difficult to determine how much IPofA
16 owed to the QI company?

17 A Well, because first off, all the money was taken out of
18 Atlantic Exchange, you know, before I ever came on board, so I
19 wasn't aware and there was no documentation to it, and
20 secondly, when IPofA, Edward Okun and Lara Coleman requested
21 the money from Security 1031, they had said that it was being
22 used to fund various closings, and at this point, I wasn't
23 quite certain what the money had been used for.

24 Q Going to bullet point number six, please. Please read
25 that.

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1 A I have some work cut out for me such as unifying our
2 exchange documents.

3 Q First of all, did the qualified intermediary documents,
4 the exchange agreements that had been used, did those permit
5 any use of the client funds other than to fund client
6 exchanges?

7 A None of them did.

8 Q And when you are saying that you are going to unify the
9 exchange documents, what did that mean?

10 A Well, we had several different companies at this point.
11 We had Atlantic Exchange, Security 1031, NES, and now IXG.
12 Each company used a separate exchange agreement. They were
13 very similar, but they were still different, and, you know, in
14 terms of running a company, it wasn't, you know, proper, good,
15 or easy, made our job more difficult to have four different
16 types of exchange agreements, so we were going to take the best
17 out of all of them and make one uniform exchange agreement.

18 Q Sir, but you said four different companies, but at this
19 point, there's actually five different qualified
20 intermediaries; correct?

21 A Well, I know that now, but at this point I was not aware
22 that they had purchased REES.

23 Q Now, were you going to change the exchange agreements to
24 inform the clients that their money was being used for things
25 other than exchanges?

1 A No.

2 Q Why didn't you do that?

3 A Well, I mean, the reason why I didn't do that and the
4 reason why I never did that is because each time was supposed
5 to be the last time, and at this point, I was extremely
6 uncomfortable with it, and, quite frankly, I didn't want to
7 make it right.

8 Q When you say each time was supposed to be the last time,
9 what did you mean by that?

10 A Each time there was a request for funds, it was supposed
11 to be the last time that funds were borrowed from a QI.

12 Q Who told you that?

13 A Edward Okun.

14 Q Had Mr. Okun ever instructed you to change the exchange
15 agreements to inform the clients what was being done with their
16 money?

17 A As far as I can recall, we never had any discussions about
18 exchange agreements, including discussing changes to make the
19 borrowing allowable under the exchange agreement.

20 Q What was -- you mean after the borrowings had occurred?

21 A That's correct. At any time during my employment.

22 Q What was your understanding at this point -- I'm sorry.
23 Do you recall a meeting in September 7th, 2006, with managers
24 from Investment Exchange Group?

25 A I do.

1 Q Please tell the members of the jury what happened during
2 that meeting.

3 A Sure. It was a meeting at a hotel, myself, Jeff Zacarias,
4 Barry Powlishen, Dan McCabe, Shirley McCabe, and the McCabes'
5 son whose name -- Drew McCabe.

6 Q Who were the McCabes?

7 A The McCabes were the owners of IXG.

8 Q The former owners?

9 A The former owners of IXG and now presently the managers of
10 IXG.

11 Q What happened at that meeting?

12 A At that meeting, I had stepped out of the room for a
13 moment, and Barry Powlishen and Dan McCabe started discussing
14 the investment policy; in other words, the investment of
15 exchange funds and real estate.

16 Q And what happened when you returned in the meeting?

17 A When I returned to the meeting, there was a discussion
18 ongoing where Dan McCabe was expressing concern about this, but
19 he also said that he knew that it had to be something like this
20 because of the rate of interest that Edward Okun had promised
21 them. He knew it couldn't be a normal type of investment
22 scenario.

23 Q Did Mr. McCabe express his opinion regarding the
24 legality or illegality --

25 MS. GRADY: I'm going to object at this point, Judge.

1 MR. DRY: It's effect on a listener because there's
2 going to be a call that the witness is going to testify with
3 Mr. Okun discussing Mr. McCabe's accusations, Your Honor.

4 MS. GRADY: It's still hearsay, Judge. He's offering
5 it for the truth.

6 THE COURT: I think he's offering it for a
7 non-hearsay purpose, ladies and gentlemen, not as to whether or
8 not it is correct, that the assertion is correct that it was
9 unlawful, but to explain why Mr. Pajonas did what he did and
10 the subsequent conversation with Mr. Okun.

11 Q Did Mr. McCabe make any accusations regarding the
12 legality?

13 A Mr. McCabe had brought with him, it was either an article
14 or ruling regarding a group of individuals who had been
15 indicted in Colorado for taking money and investing it in
16 nonexistent real estate, and he was waving that around saying,
17 you know, I'm very concerned, you know, because these people
18 are indicted for fraud.

19 Q Now, did you subsequently have a conversation with Mr.
20 Okun, Ms. Coleman about the accusation?

21 A Yes. I excused myself from the room, attempted to call
22 them, sent them an e-mail, and then the e-mail prompted both of
23 them to call me as a conference call at the same time.

24 Q What was said during that call?

25 MS. GRADY: I'm sorry. Who was on the conference

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1 call?

2 THE WITNESS: It was Lara Coleman, Edward Okun, and
3 myself.

4 A During the conference call, I was explaining that I was
5 having conversations, or at this point kind of an argument,
6 with Dan McCabe about the investment policy. I informed him
7 that we have a legal opinion that I would provide him with --

8 Q I'm sorry --

9 THE COURT: Can you help us get some specifics,
10 please.

11 THE WITNESS: Sorry.

12 Q You are on the call with Mr. Okun and Lara Coleman.

13 A I'm on the call with Lara Coleman and Edward Okun, and I'm
14 explaining to them that Dan McCabe is questioning this. Mr.
15 Okun instructs me to fire Dan McCabe.

16 Q Okay. And did you inform Mr. Okun and Ms. Coleman that
17 you, in your conversation with McCabes, had told the McCabes
18 that there was legal opinion saying this was okay?

19 A Absolutely. That was a big part of the conversation. I
20 said you have to -- it had been promised for awhile, and I
21 said, you have to get me that legal opinion so that I can
22 provide it.

23 Q Who did you say that to?

24 A I'm sorry. I said during that call to Lara Coleman and
25 Edward Okun, you have to provide me with that legal opinion

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1 that you've been promising me.

2 Q But you had represented to the McCabes in a meeting that
3 there was a legal opinion?

4 A That's right. I said to the McCabes there was one.

5 Q What was your basis for telling McCabes that there was a
6 legal opinion?

7 A That Lara Coleman and Edward Okun had represented that
8 there was a legal opinion.

9 Q Had you ever seen a legal opinion?

10 A I had not.

11 Q You told Mr. Okun and Ms. Coleman, you have to give me a
12 copy of that; correct?

13 A Absolutely.

14 Q And you said that Mr. Okun initially said to fire the
15 McCabes. Was there any conversation between you, Mr. Okun, and
16 Ms. Coleman about whether to actually go through with that?

17 A Yes. There was a lot of conversation. Ms. Coleman was
18 pretty much in agreement with me that to fire the McCabes would
19 be the worst thing in the world. It would kind of make them
20 get really suspicious. Edward Okun kept saying, I want them
21 fired, I want them fired, but eventually I told him that was
22 crazy to do and I wasn't going to do it, and eventually he
23 said, fine.

24 Q Why would it have been crazy to fire the McCabes?

25 A Well, because, you know, quite possibly then they were

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1 going to --

2 MS. GRADY: I'm going to object to the possibilities,
3 Judge. He's assuming facts beyond his knowledge.

4 THE COURT: No. I think what he's doing is he's
5 explaining why he was opposing firing the McCabes, and he's
6 explaining his own thoughts, not what was going to happen but
7 what he was fearful of, thereby explaining his motivation for
8 the decision or position he took. Objection overruled.

9 Q Why were you --

10 A I was, quite frankly, and to be blunt, I was concerned
11 that he might go to the authorities and, you know, say that
12 what was going on was a fraud, as he had already stated, as
13 McCabe had already stated.

14 Q Was that concern made clear to Mr. Okun and Ms. Coleman on
15 the call?

16 A Absolutely. It was a big part of the call.

17 Q Ultimately was the decision made not to fire the McCabes?

18 A It was.

19 Q At around this time, in September of 2006, what is
20 occurring at Security 1031 Services regarding accounting and
21 re-creating accounting?

22 A We hire an accounting firm to start auditing all of the
23 bank records. We begin to get all of the bank records, even
24 bank records that we had never seen before to review, you know,
25 all the money that has been taken out of the company.

1 Q And who is up there assisting that from Investment
2 Properties of America?

3 A Jeff Zacarias and occasionally Lydia Renka.

4 THE COURT: Who was being audited?

5 THE WITNESS: It was our own company, Your Honor.

6 THE COURT: You all talked about so many companies.
7 Which company is it?

8 THE WITNESS: All of them. All of the qualified
9 intermediary records were brought to our office. All the bank
10 records for all the qualified intermediaries were brought to
11 our office.

12 THE COURT: So that would be Atlantic Exchange.

13 THE WITNESS: Security 1031.

14 THE COURT: And also SOS?

15 THE WITNESS: Right, which is also SOS.

16 THE COURT: NES.

17 THE WITNESS: NES.

18 THE COURT: IXG.

19 THE WITNESS: That's right.

20 THE COURT: Was REES included at this time?

21 THE WITNESS: Not yet, because it was still hidden
22 from us.

23 Q What was the purpose -- was this a formal audit as there's
24 going to be an audit opinion or something like that?

25 A No. This was to try to get at a number that we could say

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1 that -- you know, that IPofA had taken from the qualified
2 intermediaries.

3 Q During this process, did you have any conversations with
4 Jeffrey Zacarias regarding his review of those bank records?

5 A Sure. We spoke --

6 MS. GRADY: I'm going to object to anything that was
7 said by Mr. Zacarias. It's clearly hearsay, Judge.

8 MR. DRY: Your Honor, Mr. Zacarias is about to inform
9 Mr. Pajonas of a very --

10 THE COURT: Wait a minute. You can generally deal
11 with objections without presaging the testimony and thereby
12 getting out something that may not be admissible until I rule
13 on it. So would you mind addressing the objection in that
14 fashion.

15 MR. DRY: Yes, Your Honor.

16 THE COURT: It's hearsay. It's clearly hearsay;
17 right?

18 MR. DRY: It would be if it was being offered for the
19 truth of the matter asserted. It's being offered for not the
20 truth but the effect on the listener and what Mr. Pajonas is
21 about to do.

22 THE COURT: To explain what Mr. Pajonas is doing.

23 MR. DRY: Yes, sir.

24 MS. GRADY: Your Honor, he doesn't need the details.
25 He can say he had a conversation with Mr. Zacarias, and based

1 on that conversation, he can go forward. The details of the
2 conversation the Government wants in for the truth of what the
3 conversation is, not what he did. He's clearly trying to argue
4 in the back door some hearsay.

5 THE COURT: But, Ms. Grady, doesn't that depend on
6 what's being said, because quite frequently it is true that
7 something that is being said can animate a particular course of
8 action, and it's necessary to put it in context, so isn't -- do
9 you have such an explanation, or is it sufficient to do what
10 she says?

11 MR. DRY: I believe it would be insufficient, Your
12 Honor, to do what she's saying.

13 THE COURT: All right. Try it, and the objection is
14 overruled, and remember, if the non-hearsay purpose is not
15 relevant or offends Rule 403, it gets stricken, and there are
16 consequences. So don't ask the question unless you have a
17 reason for putting in the substance of the context.

18 MR. DRY: Yes, sir.

19 Q Did Mr. Zacarias inform you of anything that caused you
20 increased concerns?

21 A Yes. He informed me and pointed out in records that
22 Edward Okun had taken some of the Atlantic Exchange qualified
23 intermediary funds and used them personally.

24 Q What did you do as a result of that discovery?

25 A I mean, came unglued a little bit, but after that, you

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1 know, we decided to -- my mission at that point was, along
2 with --

3 THE COURT: The question is, what did you do as a
4 consequence of that statement.

5 THE WITNESS: Okay. Sorry, Your Honor.

6 THE COURT: What did you do as a consequence of that
7 statement?

8 THE WITNESS: The whole purpose of our being was try
9 and arrange things so that we could get the money back.

10 Q Did you set up a meeting with Ms. Coleman to discuss this
11 concern?

12 A That's right. We did.

13 Q Who was at the meeting?

14 A It was Lara Coleman, Jeff Zacarias, Barry Powlishen, and
15 myself.

16 Q Did you confront Ms. Coleman regarding Mr. Okun's personal
17 use of client funds?

18 A Absolutely I did.

19 Q Did she agree?

20 A Yes. Eventually she agreed with me that it was
21 problematic how the money was being taken.

22 Q But did she admit that there had been personal use of
23 client funds initially?

24 A No, not initially.

25 THE COURT: During the course of the conversation, I

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1 think, is what he's trying to say, did she say that Mr. Okun
2 had actually personally used AEC funds?

3 THE WITNESS: No, sir.

4 THE COURT: She did not say it during the course of
5 that conversation?

6 THE WITNESS: No.

7 Q Did you set up a subsequent meeting in which Mr. Okun
8 participated?

9 A I did.

10 Q Who attended that meeting?

11 A It was Edward Okun, Lara Coleman, Jeff Zacarias, Barry
12 Powlishen, and myself.

13 Q Where was that meeting held?

14 A It was held in Boston, Massachusetts, on Edward Okun's
15 yacht.

16 Q That was the Simone?

17 A The Simone.

18 Q When did that meeting occur?

19 A It occurred on September 21st, 2006.

20 Q What happened at that meeting?

21 A At that meeting, I confronted Edward Okun with the -- now
22 the auditors had provided me with a very rough number, and, you
23 know, the number was large, and also I confronted him with the
24 fact that there had been personal use of the money, and I told
25 him that this was illegal and that this was extremely

1 problematic.

2 Q And did Mr. Okun admit that he had used money for personal
3 use?

4 A No.

5 Q Did you -- you said that you told Mr. Okun this was
6 illegal. Did you tell him anything -- did you call him any
7 names?

8 A I said that he was a thief and a liar. It was a screaming
9 match. I was very upset. I was stomping around the room. It
10 was quite a small room, and I was yelling at him and saying
11 that he's a thief and a liar.

12 Q What was his reaction?

13 A He was arguing back with me, and he told me that he would
14 sell the company or just close the company. He said it to me
15 like, what are you going to do now, I'm just going to close the
16 company, I'll shut it down, shut it down, what are you going to
17 do now, and I said, fine. I said, put the money back and close
18 it down, I don't care, you've just got to put the money back.

19 Q What did -- was there anything that had been brought to
20 the meeting that you demanded Mr. Okun sign?

21 A Yeah, there was a stack of notes. I finally wanted to
22 document all the monies that had been taken from the qualified
23 intermediaries by IPofA and Edward Okun.

24 MR. DRY: Government's Exhibit 85, please. I'm
25 sorry. I this is 85-A. I apologize, Ms. Grady.

1 MS. GRADY: Sure.

2 MR. DRY: I'd like to admit Government's Exhibit 85-A
3 into evidence.

4 THE COURT: Is there an 85-A? I don't see it.

5 MR. DRY: It's right behind 85, Your Honor. We
6 didn't have A tabs. I apologize.

7 MS. GRADY: I have no objection.

8

9 (Government's Exhibit 85-A admitted.)

10

11 Q Sir, what is this?

12 A This is a promissory note whereby Investment Properties of
13 America is borrowing \$5 million from the 1031 Tax Group -- I'm
14 sorry, Security 1031 in this instance.

15 Q The date of this is?

16 A January 31st, 2006.

17 Q What is the maturity date?

18 A July 30th, 2006.

19 Q Turning to the second page, and what is the date on the
20 bottom that the notary puts there, sir?

21 A It was signed on September 21st, 2006.

22 Q And this was signed after the maturity date was already
23 passed?

24 A That's correct.

25 Q Was there any discussion regarding the dating of these

1 promissory notes?

2 A Absolutely. Edward Okun wanted to backdate it to the date
3 of the original making of the loan.

4 Q And what did you respond?

5 A I said no. I said I wouldn't do it.

6 Q Why?

7 A Because at this point, I wanted to document the money
8 taken. I didn't want to try and make it look like it was
9 correct. I wanted his signature on a document saying he took
10 the money, and the fact that it was dated that day was fine by
11 me.

12 Q How many -- can you characterize how many of these --

13 A There's like a telephone book worth of them.

14 THE COURT: Telephone book worth of what?

15 THE WITNESS: Of stacks of these notes that were
16 signed that day by Edward Okun.

17 Q This is just one out of many that you presented to Mr.
18 Okun and he sat there and signed them?

19 A That's correct, sir.

20 Q Okay. Just to be clear, Mr. Bush was not present at the
21 meeting.

22 A That's correct.

23 THE COURT: Who?

24 MR. DRY: I'm sorry, the Notary Public. On the
25 second page on the bottom, it says Gregory Bush.

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1 A Right. That's correct. He notarized it on an --

2 Q You don't know how he notarized it --

3 MS. GRADY: Judge, I'm going to object. He has no
4 knowledge of this.

5 THE COURT: That's what he's going to ask him, I
6 think, is to establish that he has no knowledge. Do you
7 stipulate that Mr. Bush has no knowledge? I mean Mr. Pajonas
8 doesn't know how it was notarized?

9 MS. GRADY: I would agree.

10 THE COURT: Is that what you are trying to say?

11 MR. DRY: Exactly, Your Honor.

12 Q And that Mr. Bush wasn't present?

13 A He was not present.

14 MR. DRY: Okay. Government's Exhibit 85-B, please.
15 This is the admission, Ms. Grady.

16 MS. GRADY: That's fine.

17 THE COURT: Admitted.

18

19 (Government's Exhibit 85-B admitted.)

20

21 Q Sir, what are these documents?

22 A This is a consent of a sole member of Security 1031 to
23 borrow for -- I'm sorry, for Security 1031 to loan the money,
24 the \$5 million to Investment Properties of America.

25 Q This was a consent that corresponded to the note that I

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1 just showed you; is that correct?

2 A That's right. Companies need a document saying that they
3 have permission to loan monies, and this was that document.

4 Q Go to the second page, please. Is that Mr. Okun's
5 signature?

6 A That is.

7 Q Were these also presented with the loan documents from Mr.
8 Okun's signature at that meeting on September 21st?

9 A That's correct.

10 Q Prior to these notes and consents being signed, the stats,
11 had you ever seen any loan documentation or consents or any
12 type of documentation for the taking of client money from the
13 QI companies?

14 A No. Not for a lack of trying. I had --

15 MS. GRADY: I object. It's not responsive to the --

16 THE WITNESS: No, I had not.

17 Q Had you tried to get documentation to at least have
18 something that showed that there had been transfers to
19 Investment Properties of America?

20 A Since the first wire that went out for IPofA, yes.

21 Q Who did you ask for that?

22 A Lara Coleman and Edward Okun.

23 Q Were they ever provided to you?

24 A Not up until this date.

25 Q I now show you what's been marked as Government's

1 Exhibit 85. What is this document, sir?

2 A This is the investment policy for the 1031 Tax Group.

3 MR. DRY: I'd like to admit Government's Exhibit 85
4 into evidence.

5 MS. GRADY: That's fine. No objection, Your Honor.

6 THE COURT: Admitted.

7

8 (Government's Exhibit 85 admitted.)

9

10 Q Sir, going to the second page of this, the second from the
11 bottom signature, whose is that?

12 A That's my signature.

13 Q The date?

14 A Is September 21st, 2006.

15 Q And is this document also signed at the yacht meeting?

16 A Yes, it is.

17 Q Going to the first page, please, what was the purpose of
18 setting up this investment policy?

19 A Two purposes: To prevent Edward Okun from taking any more
20 money out of the qualified intermediaries, and to get
21 Investment Properties of America and Edward Okun to repay the
22 money that it had taken.

23 Q But Mr. Okun -- how many members are there on the
24 investment policy?

25 A There are five members.

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1 Q And how many members were going to be required to agree
2 before any new loans were going to be --

3 A Three. A majority.

4 Q And had there been an agreement between any of the three
5 not to authorize any new loans?

6 A That's correct. There was an agreement between myself,
7 Jeff Zacarias, and Barry Powlishen.

8 Q Okay.

9 THE COURT: Who are these other signatures?

10 Q I'm sorry. Mr. Pajonas, on page two, who else signed?

11 A The first signature is Edward Okun. The second signature
12 is Jeff Zacarias. The third is myself. The fourth signature
13 is Barry Powlishen. The only person who did not sign is
14 Kenneth Bolton.

15 Q Was he at that meeting?

16 A He was not.

17 Q What was your reaction to the outcome of the meeting?

18 A I was happy that I got Edward Okun to sign all these
19 documents to finally document all the money that he had taken.

20 Q Government's Exhibit 88, please. That's an e-mail from
21 you to Ms. Coleman and Mr. Okun?

22 A Yes, it is.

23 MR. DRY: Move for admission of Government's
24 Exhibit 88.

25 MS. GRADY: That's fine. I have no objection, Your

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1 Honor.

2 THE COURT: Admitted.

3

4 (Government's Exhibit 88 admitted.)

5

6 Q This is another -- in general terms, what is this e-mail?

7 A This is another in a long line of e-mails where I'm asking
8 for money to come back to the qualified intermediaries so that
9 we can fund exchanges.

10 Q Why are you asking about West Oaks money?

11 A West Oaks refers to a mall in Houston, and it's supposed
12 to be sold, and that's where money is supposed to come back
13 from.

14 Q Okay. Who is telling you the money was supposed to come
15 back from West Oaks Mall?

16 A Edward Okun and Lara Coleman.

17 MR. DRY: Going to Government's Exhibit 90, please.

18 I'd like to admit Government's Exhibit 90 into evidence.

19 MS. GRADY: Hold on. I have no objection, Your
20 Honor.

21 THE COURT: Admitted.

22

23 (Government's Exhibit 90 admitted.)

24

25 Q Who is that from and to?

1 A It's from myself to Edward Okun.

2 Q Turning to the second sentence, or the second line
3 starting at \$750, can you please read that?

4 A \$750 and five percent would look desperate and like
5 something is wrong. Remember, we are in the trust business.

6 Q Why are you writing this to Mr. Okun?

7 A Mr. Okun had a conversation with Jeff Zacarias, and they
8 wanted to lower the exchange fee to 750 and raise the interest
9 we would pay to the clients to five percent.

10 Q And why did you think that -- why were you so opposed to
11 this?

12 A Because nobody was paying five percent, and I was very
13 concerned that if we were paying a lot more than our
14 competitors, people would say, how can they do that. It's more
15 than banks were paying at that time.

16 Q At this point, did the clients of the QI companies know
17 what had been done with their money?

18 A No.

19 Q Can you go to the top, please. Did you receive this
20 e-mail from Mr. Okun?

21 A I did.

22 Q And what was his reaction?

23 A He was unhappy, and he's requesting additional
24 information, wanting to know office by office what the
25 competition is doing, so he's still disagreeing with me, but

1 I'm refusing to carry out what he's saying.

2 MR. DRY: And Government's Exhibit 91, please. I'd
3 like to admit Government's Exhibit 91 into evidence, please.

4 MS. GRADY: I have no objection, Your Honor.

5 THE COURT: Admitted.

6

7 (Government's Exhibit 91 admitted.)

8

9 Q Going to the top, who is this e-mail from and to?

10 A From myself to Lara Coleman.

11 Q And turning to the second paragraph, please read Ed's
12 request. I think it's three sentences, two sentences long.

13 A Just starting with Ed's request?

14 Q Yes.

15 A Ed's request. I have no problem, as I've previously
16 stated, with providing Ed with whatever he wants or needs in
17 the way of information. My only concern before the investment
18 policy was in place was that by providing him with a float
19 balance, he routinely stripped the company down to nothing.

20 Q Had you always provided Mr. Okun and Ms. Coleman with
21 accurate figures on how much client money the QIs were holding
22 up to this point?

23 A Up to this point, yes.

24 Q You had always told Mr. Okun and Ms. Coleman how much
25 client money was available at the QI companies?

1 A That's correct.

2 Q Number three, please. Would you please read the first
3 paragraph, Ed's decision-making?

4 A Ed's decision-making. You stated that Ed has poured
5 millions of dollars into this company and therefore he has a
6 right to demand certain things. I don't agree at all. Ed may
7 have millions of dollars at stake, but we all have our lives,
8 reputations, family, and freedom at stake which is worth all
9 the money in the world. I was not in control of the decisions
10 that brought us to this point. Edward was. We all got dragged
11 along, and we all have liability.

12 Q At this point, did you realize that Mr. Okun was -- had
13 used client money for things other than even commercial real
14 estate?

15 A That's right. I realized that Edward Okun had used money
16 to purchase things of a personal nature.

17 Q When you were saying that your lives, reputation, family,
18 and freedom was at stake, what were you concerned about?

19 A I was concerned about criminal liability.

20 Q Going to the second page of this e-mail, in the second
21 paragraph -- yeah, second paragraph, second sentence, I speak
22 -- or third line. I speak very plainly. Can you read from
23 that point forward?

24 A Sure. I speak very plainly, and that can sometimes hurt
25 people's feelings and make them get defensive. That is not my

1 intent. I'm just very scared and very tired, and I'm trying to
2 keep going for the sake of my family and other people who might
3 get hurt. I am really unconcerned for myself, but I worry for
4 them. I just never thought my life would play out like this,
5 and I am very sad.

6 Q What was Ms. Coleman's and Mr. Okun's -- did you express
7 your concerns to Mr. Okun?

8 A This was almost an hour-by-hour conversation every day.
9 From the moment I woke up until the moment I went to sleep, I
10 would discuss this with Edward Okun.

11 MR. DRY: Let's go to Government's Exhibit 93 which
12 has been admitted -- actually, no, it has not. I apologize.
13 I'd like to admit Government's Exhibit 93 into evidence.

14 MS. GRADY: That's fine, Your Honor. I think parts
15 of it have been admitted.

16 THE COURT: 93?

17 MS. GRADY: Well, part of the e-mail chain in the
18 bottom was admitted earlier.

19 THE COURT: Okay. I see it.

20 Q Sir, you received the Kutak Rock memo on October 9th; is
21 that correct?

22 A That's correct.

23 Q And you send this e-mail at the top to Ms. Coleman in
24 response?

25 A That's correct.

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1 Q Did you review the Kutak Rock memo?

2 A I did.

3 Q Was that consistent with what you had been told the legal
4 opinion was that had been given to Mr. Okun or Ms. Coleman?

5 A It was pretty much the exact opposite of what I had been
6 told.

7 Q Why are you sending this e-mail to Ms. Coleman?

8 A Because it didn't agree with that, and it rocked the whole
9 foundation of the reasons why they were able to take the money.

10 Q But to be -- one, at this point, did you actually believe
11 that there was legal opinion authorizing the transfers of QI
12 client funds?

13 A I started doubting everything that I was told at this
14 point, so I had concerns about whether it was -- it existed,
15 but I was rationalizing in my mind and hoping that it was still
16 out there.

17 Q Why were you rationalizing in your mind?

18 A Because it was the basis for all the money that was out
19 there that didn't exist. What we did was definitely wrong.

20 Q Okay, going to Government's Exhibit 113 --

21 THE COURT: Did you offer -- what did you end up
22 saying about 93?

23 MS. GRADY: I didn't have any objection.

24 THE COURT: That's what I thought. It's admitted.

25

1 (Government's Exhibit 93 admitted.)

2

3 MR. DRY: I'd like to offer Government's Exhibit 113
4 into evidence.

5 MS. GRADY: I don't have any objection.

6 THE COURT: Admitted.

7

8 (Government's Exhibit 113 admitted.)

9

10 Q Sir, this e-mail was sent from Barry Powlishen. Who was
11 he again?

12 A Barry Powlishen was the chief operating officer of the
13 1031 Tax Group.

14 Q Who is the e-mail sent to?

15 A It's sent to Lara Coleman, myself, Edward Okun, David
16 Field, and Jeff Zacarias.

17 Q And were there updates, or were you trying to track the
18 cash that was available on hand at this point?

19 A Absolutely.

20 Q And it says liquidity is \$14.2 million. What did that
21 mean?

22 A Well, liquidity means how much cash is on hand to fund
23 closings of real estate.

24 Q But here you've got total cash of 39.2 and segregated cash
25 of 25. Liquidity was the difference?

1 A Well, right. Liquidity was supposed to be the difference,
2 but in this case, this number is probably not accurate.

3 Q Why?

4 A Because we were taking the number down lower to not show
5 Edward Okun how much money we actually had, because he would
6 routinely take almost the money that we had.

7 Q So you were falsifying these? You were underreporting how
8 much money was on hand?

9 A Absolutely.

10 Q And your reason for doing so -- he is the owner of the
11 company. What is your reason for doing so?

12 A Because whenever we would show any amount of money in the
13 bank account, he would take it.

14 Q Now, when it says liability, how much -- what does that
15 number mean?

16 A Liability means that if we were to fund every exchange
17 that we had open, that was the amount of money that it would
18 require.

19 Q So just to be clear, you said you are underreporting how
20 much actual cash is on hand, but was -- from your perspective
21 as the president of 1031 Tax Group, what was the financial
22 condition of 1031 Tax Group?

23 A Complete shambles. We weren't lying by very much because
24 there wasn't a lot of money to begin with. It's not that this
25 is \$14 million and we were really holding 50, but we -- it was

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1 shambles.

2 Q Okay. Did you receive a copy of the November 7th, 2006,
3 Perkins memorandum discussing the QI issues?

4 A I did.

5 Q Did you review that?

6 A I did.

7 Q Were you surprised by its conclusions regarding criminal
8 liability?

9 A No.

10 Q What is your relationship like at this point with Edward
11 Okun? Are there a lot of calls going back and forth? What is
12 going on?

13 THE COURT: You mean in November of 2006?

14 MR. DRY: I apologize, Your Honor. Right around the
15 time of the Perkins memorandum, early November of 2006.

16 A Prior to that point, we spoke multiple times a day. At
17 this point, we barely speak at all.

18 Q I'd like to show you what's been marked Government's
19 Exhibit 123.

20 MR. DRY: I'd like to admit Government's Exhibit 123
21 into evidence.

22 MS. GRADY: I have no objection.

23

24 (Government's Exhibit 123 admitted.)

25

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1 Q Do you remember sending this e-mail, sir?

2 A I did, yes.

3 Q Who did you send it to?

4 A I sent it to Edward Okun, Lara Coleman, David Field, and
5 Barry Powlishen.

6 Q What was your purpose in sending this e-mail?

7 A To convince them that it was not okay to keep borrowing
8 money from the qualified intermediaries.

9 Q What is the FEA?

10 A The FEA is the Federation of Exchange Accommodators. It's
11 a trade group, which we belong to, of qualified intermediaries.

12 Q Are these -- this investment guideline, are these
13 regulations? Are they mandatory?

14 A No. No. They are just guidelines that were published by
15 the FEA as being prudent operation of a qualified intermediary.

16 Q If you can go to the top. In general terms, what is the
17 FEA guidelines? What is this laying out for QIs?

18 A It's laying out what's acceptable investments for the
19 client funds.

20 Q Okay. And going to B, what are the two key criteria?

21 A The first criteria is safety of principal, and the second
22 is adequate liquidity.

23 Q 1031 Tax Group at this time frame, did you have adequate
24 liquidity?

25 A Real estate is one of the most illiquid investments you

1 can have.

2 Q Going to the safety of the principal, these are the
3 criteria, according to FEA, that investment funds -- the
4 investment of client funds, these are five criteria that they
5 say are usually the appropriate ones?

6 A That's correct.

7 Q Best case, even for the money that had been used for
8 commercial real estate, did that meet this criteria?

9 A No.

10 Q Going to adequate liquidity on D, please. It says, funds
11 for replacement properties can be requested any time, need to
12 be available within a few hours to a few days. Is that
13 consistent with your understanding of how things worked at 1031
14 Tax Group, clients can request their funds at any time?

15 A It's pretty much the exact opposite.

16 Q I'm sorry. At 1031 -- well, I apologize. It was an
17 inartful question. Is it true, from your experience as 1031
18 Tax Group's president, that -- you did not know when clients
19 were going to need their money?

20 A That's correct.

21 Q And you are aware of examples where a client would deposit
22 their funds with the qualified intermediary and request their
23 funds for a closing very shortly thereafter, couple days, three
24 days, four days after?

25 A Absolutely. In some cases, the same day.

1 MR. DRY: Nothing further with this exhibit. Turning
2 to Government's Exhibit 126, please, bottom -- well, I'd like
3 to admit Government's Exhibit 126 into evidence.

4 MS. GRADY: No objection, Your Honor.

5 THE COURT: Admitted.

6

7 (Government's Exhibit 126 admitted.)

8

9 Q Turning to the bottom e-mail, who are you sending this
10 e-mail to?

11 A David Field, Edward Okun, Lara Coleman, and Barry
12 Powlishen.

13 Q In the first line, you say, David, pursuant to my
14 conversation with you this afternoon. Did you have a
15 conversation with Mr. Field that afternoon?

16 A I did.

17 Q What was the purpose of you sending this e-mail?

18 A To document that conversation.

19 Q Were you also informing the others about the substance?

20 A That's correct.

21 Q In the first paragraph, you discuss that you were
22 proposing a meeting, and Field wanted to cancel it?

23 A That's correct.

24 Q Why were you proposing a meeting at that time?

25 A I was proposing the meeting with the lawyers of IPofA and

1 other officers of IPofA and the 1031 Tax Group to, you know,
2 let everybody know what was going on with the 1031 Tax Group
3 and try to get a solution to get the money back.

4 Q And what was Mr. Field's reaction to that proposal?

5 A He killed the meeting.

6 Q The second paragraph says, I was further advised by you,
7 do not concern yourself with how IPofA returns the money. Did
8 he, in fact, tell you that?

9 THE COURT: That isn't what it says. I was further
10 informed by you that I was not to concern myself.

11 MR. DRY: I'm sorry.

12 THE COURT: If you are reading, read. If you're not,
13 use your own words.

14 MR. DRY: I'll just stick to having the witness read
15 it.

16 Q Sir, please read the first sentence of the second
17 paragraph.

18 A Sure. I was further advised by you that I was not to
19 concern myself with how IPofA returns the monies that it took
20 from the various QIs making up the 1031 Tax Group.

21 Q Had Mr. Field expressed that to you?

22 A Sure. He was basically trying to relieve me of command.

23 Q Going to the second page of it, can you read that top
24 sentence?

25 A You further advised me that I'm not to call Ed Okun or

1 Lara Coleman anymore as I am wasting their time. I would ask
2 Ed to please confirm this.

3 Q Did he, in fact, advise you of that?

4 A Yes.

5 Q Going to the last statement, please read that paragraph.

6 A I'm sorry, which paragraph?

7 Q The second paragraph.

8 A Lastly, I want to go on record stating that I disagree
9 with your method of resolving this crisis. I'm not in favor of
10 governing this company by committee; however, involving the
11 people who can help fix the problem is the only recipe for
12 success. By isolating the IPofA attorneys from the problem,
13 you are removing the people who can most properly explain the
14 properties and loan documents to you. I am uncertain about the
15 obligations of a CPA, but I can assure you that attorneys have
16 obligations that are statutory and/or regulatory.

17 Q What did you mean by the term by isolating the IPofA
18 attorneys?

19 A They refused to include the IPofA attorneys in any
20 solution about getting the client funds back.

21 Q When you say they --

22 MS. GRADY: I'm going to object unless he has
23 personal knowledge. I don't think he has a foundation.

24 Q What was your basis for saying that they were isolating
25 the IPofA attorney?

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1 A David Field told me that they were not going to be
2 included in any solution because Edward Okun was not going to
3 govern this company by committee.

4 THE COURT: Objection overruled.

5 Q Turning to the last paragraph, accordingly, first
6 sentence, please?

7 A Accordingly, you can fix this problem however you want to
8 fix it so long as it gets done.

9 Q And the next sentence?

10 A Okay. Please keep in mind that the QI is now down to
11 \$6 million of liquid funds.

12 THE COURT: 16 million.

13 THE WITNESS: I'm sorry, \$16 million of liquid funds.

14 Q Do you know whether that was accurate or inaccurate about
15 the amount at this point?

16 A I doubt I was telling them any accurate liquidity figures
17 at this point.

18 Q You were underreporting it?

19 A Absolutely.

20 Q Was the 1031 Tax Group in a stable financial condition?

21 A No. Far from it.

22 Q Going to the first page, top. This is Mr. Okun's
23 response. It discusses you being a salesperson. What role was
24 Mr. Field recommending for you in that call with -- between you
25 and Mr. Field?

1 A What he told me furthermore was that I should have nothing
2 to do with the management of the company anymore, and I should
3 really act as a salesman or sales manager, and that was it.

4 Q What was your role, as you understood it -- I'm sorry.
5 When was your last day working for 1031 Tax Group?

6 A November 30th, 2006.

7 Q What happened on that day?

8 A I got fired.

9 Q Can you describe events that led up to you being fired?

10 A Sure. I was home because at this point I was not going
11 into work anymore, and I received a call that there were more
12 withdrawals pending than money we actually had in the bank
13 accounts, and Edward Okun and Lara Coleman and David Field had
14 been informed of that, and there was no solution.

15 Q What did you do?

16 A I went down to the office, took stock of the situation,
17 realized that this was happening, that we were running out of
18 money, and I made three calls.

19 Q Who did you call?

20 A I called Edward Okun -- I made all three calls on
21 speakerphone so the whole office could hear. I called Edward
22 Okun, and I got on the phone with him completely agitated, and
23 I said, where's the money, Ed, where's the money.

24 At this point we were negotiating my leaving the company.
25 And he kept saying to me, my lawyers say I can't speak to you,

1 I can't speak to you, my lawyers say I can't speak to you. And
2 I'm shouting, where's the money, what are you doing, where's
3 the money, and finally he hangs up on me.

4 Q Who else did you call?

5 A The next call was to David Field, again on speakerphone,
6 and I was shouting at him as well, and I said, David, we're out
7 of money, where's the money coming from, where's the money
8 coming from, and he basically had almost no reply and hung up
9 on me.

10 Q And who is the next call?

11 A Lara Coleman. I did not get her on the phone. I received
12 her voice mail, and I was shouting at her saying that we had
13 run out of money, and I shouted into the phone, I said, you're
14 going to go to jail, and you're never going to see your kids
15 again.

16 Q Ultimately on that day, on November 30th, did 1031 Tax
17 Group run out of money?

18 A No, it didn't.

19 Q Why?

20 A Luck. Nothing but luck. One of the closings requesting
21 the money got canceled, and at the same time another property
22 where the money was incoming closed, so we received the money.
23 Nothing but dumb luck saved the company that day.

24 Q Did you later that afternoon, did you overhear a
25 conversation between Mr. Okun and Mr. Zacarias?

1 A Yes, I could.

2 Q How did that happen?

3 A Mr. Zacarias was talking to Mr. Okun on a cordless headset
4 and had walked into another office. I pressed the speakerphone
5 button so the whole office could listen in on the conversation.

6 Q What did Mr. Okun tell Mr. Zacarias?

7 A He was telling him to fire me, to have the locks changed
8 and to call the police to have me removed from the premises.

9 Q And ultimately you were fired that day?

10 A I was.

11 Q Did Mr. Zacarias do it?

12 A No, he didn't. He left.

13 Q Mr. Zacarias left?

14 A Mr. Zacarias left after the conversation with Mr. Okun.

15 He did not fire me.

16 Q Who did fire you?

17 A I received a call from my attorney telling me that a
18 letter had been faxed over from Mr. Okun's attorneys firing me.

19 Q You said you had an attorney at this point. Why did you
20 have an attorney?

21 A I was negotiating my severance from the company.

22 Q Under the terms of your severance or your employment
23 agreement, how much were you entitled to receive as severance?

24 A I believe it was roughly about \$330,000.

25 Q How much severance did you ultimately receive?

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1 A I negotiated --

2 Q Negotiated?

3 A I negotiated a severance. I did not receive, but I
4 negotiated a severance of \$950,000.

5 Q Approximately \$600,000 more?

6 A That's correct.

7 Q And during -- did you participate in purchase negotiations
8 with Mr. Okun's attorneys?

9 A I did.

10 Q During those purchase negotiations, what was said?

11 MS. GRADY: I'm sorry, purchase negotiations?

12 MR. DRY: I'm sorry. Not purchase. Severance
13 agreement negotiations.

14 Q Did you participate in severance agreement negotiations
15 with Edward Okun's attorneys?

16 A I did.

17 Q What was said during those meetings?

18 MS. GRADY: I'm going to object, Judge. It's clearly
19 hearsay.

20 MR. DRY: No, it's not, Your Honor. It's agent.
21 They are Mr. Okun's agents negotiating on his behalf with Mr.
22 Pajonas.

23 THE COURT: What does that have to do with this case?

24 MR. DRY: Because some of the things that were said
25 will explain how Mr. Pajonas got \$600,000 more than his

1 employment agreement entitled him to.

2 THE COURT: How is that relevant to this case?

3 MR. DRY: It's the Government's position it was a
4 payoff to keep Mr. Pajonas quiet, Your Honor.

5 MS. GRADY: Your Honor, the Government hasn't
6 established any kind of agency. We don't know these lawyers.
7 We don't know any of Mr. Okun's authority to ask these lawyers
8 to negotiate anything. It's completely speculative, and it's
9 hearsay.

10 THE COURT: You say this didn't come from his
11 lawyers?

12 MS. GRADY: I don't know, Judge. There's been no
13 proof of that at this point. He's calling them agents, but
14 there's been no agency established.

15 THE COURT: His lawyer is his agent, isn't he?

16 MS. GRADY: Yes, but there's no specific authority
17 established by the Government they can act on this particular
18 subject.

19 MR. DRY: I don't understand. I can ask him who the
20 attorneys are.

21 THE COURT: The issue is whether or not it's being
22 made by the agent, so you have to establish.

23 Q Sir, who represented Mr. Okun in the severance
24 negotiations, which law firm?

25 A It was Kluger Peretz.

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1 Q Kluger, Peretz, Kaplan, and Berlin?

2 A Right. I'm sorry. I don't recall all the names, but it
3 was Kluger Peretz.

4 Q Did you participate in a meeting with Abbey Kaplan from
5 that law firm?

6 A I did.

7 Q And did Mr. Kaplan represent to you that he was
8 negotiating on behalf of Edward Okun?

9 A Absolutely.

10 Q During your negotiations with Mr. Kaplan, describe -- was
11 there any discussion regarding the potential for litigation?

12 A Absolutely. Both sides were both threatening litigation
13 and at the same time pointing to the other side saying, you
14 don't want litigation.

15 Q Why did neither side want litigation?

16 A Because it's an ugly mess, and nobody wanted it to see the
17 light of day.

18 Q What do you mean, see the light of day?

19 A The allegations of how the money was being used was not
20 something --

21 MS. GRADY: Judge, I'm going to object to his
22 conclusions that both sides wanted to avoid litigation. I
23 think that's an assumption he can't make. He can only testify
24 about his own knowledge.

25 THE COURT: I think what he said is the lawyers from

1 both sides were saying that, but I'm not sure. I think it
2 would be a good idea if you asked specific -- get in there and
3 deal with it. She's got a legitimate objection to the way it's
4 coming in, and if it doesn't belong in, it doesn't belong in,
5 so do it right or do it not at all.

6 Q Did Mr. Kaplan threaten you with litigation and tell you
7 that you did not want litigation because things would come out
8 about what had happened?

9 A Many, many times during that meeting.

10 Q Did you tell Mr. Kaplan that Mr. Okun had more to worry
11 about than you did?

12 A I did.

13 Q Ultimately, you received \$900,000; correct? You
14 negotiated for \$900,000 in severance; correct?

15 A \$950,000 in settlement.

16 Q As part of that settlement, were you required to sign an
17 agreement that included a confidentiality provision?

18 A I did.

19 Q Did you perceive at the time that you were being given
20 extra money in order to keep you quiet?

21 A Yes. I would say that that's a fair statement.

22 Q Sir, you've been granted immunity in this case; correct?

23 A I have.

24 Q And that means you can't be prosecuted for your actions
25 during all this; correct?

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52

1 A That's correct.

2 Q But you can be prosecuted for perjury if you perjure
3 yourself here today?

4 A That's been made clear to me.

5 MR. DRY: One moment, Your Honor, please.

6 THE COURT: Ladies and gentlemen, I'll give you some
7 instruction later on in the case about what immunity means, but
8 it means basically that he can't be prosecuted, but -- is it
9 use immunity or immunity for past conduct?

10 MR. DRY: 6001 immunity.

11 THE COURT: It's immunity from prosecution for what
12 he's testified to or for what he did. The reason you are
13 allowed to hear this information is because it's something you
14 can consider in assessing the believability of a witness's
15 testimony, and I'll explain that to you, but that's why it's
16 being -- you are hearing that information at this time.

17 MR. DRY: Just very briefly. I'm not going to have
18 many questions. Bring up Government's Exhibit 97.

19 MS. GRADY: I have no objection.

20 MR. DRY: I'd like to admit Government's Exhibit 97
21 into evidence.

22 THE COURT: All right.

23

24 (Government's Exhibit 97 admitted.)

25

1 Q Just the top portion of the e-mail, scroll down just a
2 little bit. This is from you to Mr. Okun, correct, on
3 October 11th, 2006?

4 A That's correct.

5 Q And this was after you received the Kutak Rock memo;
6 correct?

7 A That's correct.

8 Q Had you learned that Mr. Burr had not, in fact, given a
9 legal opinion by this point?

10 MS. GRADY: I'm going to object, Judge. That's
11 assuming facts not in evidence and beyond his knowledge.

12 THE COURT: What fact does it assume that's not in
13 evidence?

14 MS. GRADY: The Government says that Mr. Burr did not
15 give an opinion. That's not been --

16 THE COURT: The jury can decide that about what Mr.
17 Burr said.

18 MS. GRADY: Yes, sir.

19 THE COURT: Objection overruled.

20 Q Did you learn that Mr. Burr had not given a legal opinion
21 by this point?

22 A That's correct.

23 Q What is your purpose in sending this e-mail?

24 A My sole purpose of this e-mail is to let Edward Okun know
25 that he has to return all the money, that there is no basis for

1 borrowing not even a penny of qualified intermediary funds.

2 Q Can we go down a little bit. Right there, the second
3 paragraph. Our recent accounting project shows IPofA owes to
4 QIs approximately -- almost -- approximately almost
5 \$130 million. Were you surprised by this figure?

6 A Absolutely. Absolutely.

7 Q And turning to the last paragraph -- can we --
8 accordingly. Can you read this for the members of the jury,
9 please.

10 A Accordingly, it is my conviction that the monies loaned to
11 IPofA do not constitute a prudent investment. I am not even of
12 the belief that the QI could loan small sums of money to IPofA
13 and still remain within the confines of these prudent investor
14 statutes.

15 Q Going to the second page, please, at the top. Can you
16 read it?

17 A These loans simply do not amount to a prudent investment
18 when we have no documentation to support the creditworthiness
19 of these investments. Therefore, 100 percent of these funds
20 must be returned to the QIs without delay.

21 Q This was based on review of the Kutak Rock memo?

22 A The Kutak Rock memo as well as some additional research on
23 my part.

24 Q Okay. Had you discussed the Kutak Rock memo with Edward
25 Okun?

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55

1 A I had.

2 Q What did he say about it?

3 A He said that -- what he said to me was that since the 1031
4 Tax Group was formed in Delaware, that Delaware law controlled,
5 that none of these other state statutes that were stated in the
6 Kutak Rock memo affected the ability to loan money.

7 Q Did he tell you that --

8 A So it was still okay.

9 Q Did he tell you that the Kutak Rock memo allowed him to do
10 what he was doing in those states that he researched or just
11 that Delaware controlled?

12 A He said that Delaware controlled.

13 Q Had you done any research on Delaware?

14 A After that conversation, I pulled up Delaware's statute --

15 MS. GRADY: Judge, I'm going to object. He's telling
16 about Mr. Okun's belief. His belief after that is completely
17 irrelevant. It's what Mr. Okun said to him and what Mr. Okun's
18 belief was, not what the law is. What the law actually was or
19 is is irrelevant.

20 MR. DRY: Your Honor, I'm about to show where Mr.
21 Pajonas, on the first page of his memo, talks about Delaware
22 and explains to Mr. Okun in this e-mail that Mr. Okun's
23 Delaware theory does not hold water, so it goes to --

24 THE COURT: Objection overruled. It goes to Mr.
25 Okun's state of mind.

1 Q So did you do some research on Delaware, sir?

2 A I did.

3 Q Going to the first page of the memo, that I-was-also
4 paragraph, you talk about the legal opinion, that you had been
5 told that no such opinion issued. Can you start with the when
6 I mentioned this to you? It's almost --

7 A I see it. When I mentioned this to you the other day, you
8 stated that since we are formed in Delaware, these state
9 statutes would not apply to us. I do not believe that we are
10 somehow exempted from these state statutes by virtue of being
11 formed in Delaware. Furthermore, Delaware has a Prudent
12 Investor Act that is very similar to Massachusetts, Texas,
13 Colorado, and New York. Then I cite the statute in Delaware.
14 We would have the same problems even if we interpreted our
15 situation according to what you stated.

16 Q Second page in that I-know paragraph. You sit there and
17 say, I have not benefited. Can you read that sentence for me,
18 or two sentences, please.

19 A I have not benefited from all these loans to IPofA, yet I
20 worry that I have a heavy burden of risk if things should go
21 wrong. Let's not wait for that to happen. You don't want
22 that, and I don't want that. I want this fixed now. Please
23 help me to do this because I simply cannot and will not go on
24 like this.

25 Q You weren't on this, but you never saw this response from

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1 Mr. Okun?

2 A No, I did not.

3 Q But at this time frame, your relationship with Mr. Okun is
4 deteriorating?

5 A It is.

6 MR. DRY: Nothing further, Your Honor.

7 THE COURT: Ms. Grady.

8

9 CROSS-EXAMINATION

10 BY MS. GRADY:

11 Q Good morning.

12 A Good morning.

13 Q I think you told the Government -- sorry. You told the
14 members of the jury today that you routinely lied to the
15 president of your company, to the owner of your company?

16 A About the amount of money on hand, yes, I did.

17 Q You had no problem lying to Mr. Okun about the money in
18 the company; correct?

19 A Not on that issue, no.

20 Q And you were not just lying to him, you were lying to
21 other members that were on the e-mail, weren't you; Mr. Field,
22 Ms. Coleman, Mr. Zacarias in the variety of e-mails that the
23 Government put forward today?

24 A I think that's an overstatement. I'm not sure that that's
25 accurate.

1 Q Well, overstatement. You called it an overstatement, but
2 it's really much more of a lie; correct?

3 A You included certain people in that statement who knew
4 that that was not a true statement as well, so it wouldn't be
5 that I was lying to them.

6 Q But you had no problem lying to Mr. Okun?

7 A No, not on that issue. None at all.

8 Q Now, you testified about the FEA standards, and that was
9 one of the Government's exhibits, and you read through some of
10 the standards; correct?

11 A That's correct.

12 Q And at that time, you had sent that to Mr. Okun.

13 A That's correct.

14 Q That indicated that clients could get funds at any time.

15 A That's correct.

16 Q And clients did request funds at any time.

17 A That's correct.

18 Q And Mr. Okun never missed an exchange, did he?

19 A Up until the point the company went bankrupt, no.

20 Q But until the time you left, Mr. Pajonas, at the end of
21 November, he hadn't missed an exchange, did he?

22 A No, he did not.

23 Q He had a great source of funds in Roy MacDowell's capital,
24 didn't he?

25 A I don't know that.

1 MR. DRY: Objection, Your Honor.

2 THE COURT: He said, I don't know.

3 Q Well, you testified yesterday about an e-mail,
4 Government's Exhibit Number 28, and you sent this to Mr. Okun
5 on February 15th, and in that e-mail you said, Ed, I need you
6 to call the office. We are having big money issues, we're
7 going to need Roy ASAP. That's Roy MacDowell; right?

8 A Absolutely.

9 Q You knew that Mr. Okun could get a loan at the drop of a
10 dime, or as you said, ASAP, when money needed to be in the
11 company; correct?

12 A That's what Mr. Okun represented to me.

13 Q And you relied on that because you said, we're having
14 money issues, and we're going to need Roy?

15 A Absolutely.

16 Q Going back a little bit to a couple of things that were
17 said yesterday, you know that Lara controlled all the wires;
18 right?

19 THE COURT: Maybe the jury is not as familiar with
20 these people as you are.

21 MS. GRADY: I'm sorry, Judge. You're right.

22 Q Mr. Pajonas, it's your understanding that Lara Coleman was
23 the only one who could wire funds to and from AEC and
24 eventually all of the companies; correct?

25 A I'd say that's a fair assumption, yes.

1 Q Mr. Okun didn't control any wiring ability, did he?

2 A Well, it's also my assumption that he was the one who told
3 Lara Coleman to make these wires.

4 Q That's not the question.

5 A I thought it was.

6 Q No. The question was, did Mr. Okun have the ability to
7 send a wire?

8 A You mean physically send the wire?

9 Q Correct.

10 A I don't know whether he did or didn't.

11 Q Now, these -- just to make sure the jury understands, you
12 are the president of 1031 Tax Group?

13 A That's correct.

14 Q And underneath, as 1031 Tax Group grew, there were first
15 AEC and then SOS; correct?

16 A That's correct.

17 Q And those are the first two qualified intermediaries,
18 those were brought under 1031?

19 A 1031 Tax Group.

20 Q Those were both owned by Mr. Okun.

21 A That's correct.

22 Q Whether or not you knew REES was bought, you know that
23 REES was eventually brought under 1031 Tax Group. REES is the
24 Florida QI that was bought in June; correct?

25 A Right, without my knowledge.

1 Q That was brought under 1031 Tax Group, too, wasn't it?

2 A To be honest with you, I never saw the documentation for
3 it, but I would make that assumption.

4 Q You know that Mr. Okun bought that, because it was told to
5 you that Mr. Okun bought that?

6 A That's correct.

7 Q And you know that Mr. Okun bought the NES, that San
8 Antonio, you testified about that yesterday. You know he
9 bought that?

10 A That's correct.

11 Q And you know that -- you helped with that purchase of that
12 other QI, didn't you?

13 A That's correct.

14 Q So that again was brought under the umbrella of the 1031
15 Tax Group?

16 A That's correct.

17 Q And then when he bought IXG, which was the Colorado QI,
18 you helped with that one as well, didn't you?

19 A No, I did not.

20 Q You tried to stop Mr. Okun from buying it?

21 A Absolutely.

22 Q And that's when you had the conversation with the McCabes
23 when the McCabes actually found out about the fact that Mr.
24 Okun invested some of this money in real estate?

25 A No. That happened before that. That happened before the

1 purchase. That conversation happened after the purchase.

2 Q Right. Let's go to that for a minute. You indicated to
3 the members of the jury that in that conversation that you had
4 with Mr. McCabe, you said he was concerned about fraud because
5 he had some indictment where people had been charged with
6 fraud; right?

7 A You are talking about the meeting that we referred to at
8 the hotel after IXG was purchased?

9 Q Yes.

10 A Yes. He did say that he had some concern about how the
11 funds were invested.

12 Q And he pointed out to you -- you testified on direct just
13 a little while ago that there was some legality, an article or
14 indictment or something, 52 counts, brought that to your
15 attention?

16 A I didn't say how many counts there were, but, yes, he had
17 an article of some sort.

18 Q And that was an article regarding fraud of nonexistent
19 real estate; you said that on direct?

20 A That's correct.

21 Q So that Colorado, or that case was about nonexistent real
22 estate, and that's why fraud was brought; correct?

23 A That's correct.

24 Q And in this case, you actually said to Mr. McCabe in an
25 e-mail that that's different because we don't have the intent

1 to defraud; they had the intent to defraud?

2 A I stated that in an e-mail to Lara Coleman and Edward
3 Okun, not Dan McCabe.

4 Q I'm sorry. You're correct. So you did say that their
5 case was different because you didn't have the intent to
6 defraud?

7 A That's correct.

8 Q Going back to my earlier point, with all of these
9 companies in 1031 Tax Group, it's fair to say that they -- they
10 are really brand names at this point? Since they are all
11 underneath the 1031 Tax Group, they just kept the brand names
12 of the five different QI companies; correct?

13 A I'm not sure what you mean by the question.

14 Q Well, they were all owned by Mr. Okun?

15 A That's correct.

16 Q They are all in the same company, they are all owned by
17 1031 Tax Group?

18 A That's correct.

19 Q They are not individual entities anymore?

20 A Some of them are run as individual entities still.

21 Q They are run by managers who report to Mr. Okun because
22 he's the owner of the company.

23 A That's correct.

24 Q And these loans that you spoke about yesterday were
25 intracompany loans, in other words, between the QIs, between

1 the companies that Mr. Okun owns?

2 THE COURT: Ms. Grady, you are confusing me.

3 MS. GRADY: Okay. Sorry, Judge.

4 THE COURT: And I think maybe we better get this
5 straight. You have made the assertion in your questions that
6 the QIs aren't any longer -- after they are under the
7 management or brought within the umbrella of the 1031 Tax
8 Group, that they aren't separate companies anymore. Then in
9 your next question, you refer to them as companies. They
10 either are companies or they are not companies. Which is it?

11 And you have to stay on one track or the other unless
12 they have been converted into something that is not a company.
13 I think I understand what you are saying, but let's keep it
14 straight so that we don't -- this is a complex area. Let's
15 don't confuse people any more than have to be.

16 MS. GRADY: I'm going to try, Judge. I agree.

17 THE COURT: So the bottom line is that those QIs all
18 remained as companies, didn't they? Is that right? They
19 remained as corporations or not?

20 THE WITNESS: They were still legal entities, but
21 they were owned by the 1031 Tax Group.

22 THE COURT: All right. Now we know that. Let's go
23 ahead and proceed from that.

24 MS. GRADY: Okay.

25 Q It's fair to say as things progressed with Mr. Okun, I

1 think you said it to the members of the jury, that you screamed
2 at him?

3 A Absolutely.

4 Q You screamed at a lot of people?

5 A I wouldn't say a lot of people.

6 Q Ms. Coleman?

7 A Absolutely.

8 Q You screamed at some of the people at SOS?

9 MR. DRY: Objection to relevance.

10 THE COURT: Ms. Grady, what does that have to do with
11 it?

12 MS. GRADY: I'll move it to a different avenue,
13 Judge.

14 Q The day that you were fired, you indicated just plain and
15 simple, that Mr. Zacarias just left the building.

16 A That's correct.

17 Q That was after you threw a chair at him; correct?

18 A That was much earlier in the day, and I did not throw it
19 at him. I threw it in his direction. I had no intent to hit
20 him. It's a fine distinction, but I wouldn't injure him.

21 Q Okay, so you threw a chair -- this was a big leather
22 chair?

23 A No. It was a folding chair.

24 Q Okay.

25 A I don't think I'm capable of throwing a big leather chair.

1 Q You clearly had anger issues, and you threw a folding
2 chair in the general direction.

3 MR. DRY: Objection, Your Honor.

4 THE COURT: Look, you are the one who put on the
5 testimony about he was angry -- look, Ms. Grady, I think it's
6 pretty clear that he was really frosted, and everybody knows
7 that. I think the Government will stipulate that, Mr. Pajonas
8 will stipulate it, and they are paying attention over here in
9 the box.

10 MS. GRADY: I understand, Judge. I just wanted to
11 make sure they got the full picture --

12 THE COURT: Oh, I think they got it.

13 MS. GRADY: -- of how frosted he was. I'm with you.

14 Q Now, when you were negotiating your termination, that was
15 before you were actually terminated; correct?

16 A That's correct. Well, I had been relieved of command but
17 not fired.

18 Q And you were relieved of command when?

19 A It was sometime late in October. I don't recall the
20 specific date.

21 Q So you still received e-mails even though you were
22 relieved of command; correct?

23 A That's correct.

24 Q And you knew the dire consequences, the dire money
25 situations that each of the companies was in?

1 A That's correct.

2 Q And your employment contract only called for 90 days
3 severance; right?

4 A I don't believe that to be the case. I can't recall the
5 specifics of it.

6 THE COURT: 90 days notice or payment of a severance
7 package of 90 days salary? Which are you talking about, Ms.
8 Grady?

9 MS. GRADY: I'm talking about 90 days salary.

10 THE WITNESS: Actually, my understanding of it, my
11 recollection of it is different.

12 Q Okay. Well, at any rate, you are negotiating for a huge
13 sum of money as a severance package upon your release from the
14 company?

15 A Sure.

16 Q At one point, you even asked for a \$2 million severance,
17 didn't you?

18 A I believe my attorneys were asking for as much as they
19 could.

20 Q And you authorized your attorneys to ask for as much as
21 you could?

22 A Sure.

23 Q And you knew the financial status of the company at that
24 time?

25 A I'm not sure that that's a fair statement. I didn't have

1 knowledge of IPofA's financial condition nor --

2 Q You saw the e-mails. You just testified that you saw the
3 e-mails where they're scraping up money and making exchanges
4 from all kinds of places; correct?

5 A Right, but I had also been provided with a statement by
6 David Field, Edward Okun's and IPofA's CPA showing he was worth
7 \$300 million. There was a difference between a liquidity
8 problem and actual asset value.

9 Q But at the time that you were negotiating and received
10 this money, you didn't want to admit it, but you knew it was
11 coming from QI money, didn't you?

12 A I don't think that I would say it that way. I did want
13 out of the company, and a part of me -- I'll be brutally
14 honest. I didn't care. I wanted out. I took some comfort in
15 the fact that I was shown a financial statement that he was
16 worth \$300 million, but I wanted out.

17 Q Mr. Pajonas, answer the question really carefully, and
18 listen --

19 THE COURT: You mean the one he just answered?

20 MS. GRADY: No, the one he's about to.

21 THE COURT: He doesn't need a preface like that.

22 Q You knew at the time you were taking this severance money
23 that this was coming from qualified intermediaries, the client
24 funds, didn't you?

25 A No. No. I didn't know that for a fact, no. Could I make

1 an assumption? Perhaps. But I didn't know that as a fact.

2 Q You remember talking to the Government, one of the ladies
3 at this table right here, on August 18th of 2008? You had a
4 lot of conversations --

5 A I had a lot of conversations with the Government.

6 Q In particular, you told her that you didn't want to
7 admit --

8 THE COURT: Let's ask a question, please, and do this
9 in the correct way.

10 MS. GRADY: Yes, sir.

11 Q Do you deny telling this lady over here --

12 MR. DRY: Which lady?

13 THE COURT: It looks like there are about four of
14 them over there. Depending how far back you go, there are more
15 than that. I don't know who they are.

16 Q I'm looking at the interview. We can start with the
17 fact that Mr. Dry was there.

18 THE COURT: He is not a lady.

19 MS. GRADY: No, Judge, I think he's not.

20 MR. DRY: I agree to that.

21 MS. GRADY: I thought I'd go to the easiest one. Mr.
22 Dry is right there. Seems to be most appropriate.

23 THE COURT: A better way to do this is, on such and
24 such a date, you were being interviewed by representatives of
25 the Government, and on such and such a date, did you say, and

1 then you can deal with it later in another way. That's how you
2 ask him.

3 Q So on August 18th with Mr. Dry, Ms. Newman, and Ms. Onks,
4 not her, not first and last, two ladies in the middle, did you
5 tell them, I did realize that the money came from the QIs?

6 A I don't recall. There was a lot of meetings. I could
7 have said that that was one of the possibilities as I stated
8 here right now. That could be one of the possibilities.

9 Q How many meetings did you have with the Government?

10 A I don't recall. Maybe four or five or so. There was one
11 telephone conference as well.

12 Q I had seven interviews with the Government. Would that
13 sound about right?

14 A I think so, sure.

15 Q Were you shown copies of all of these before you came to
16 court today?

17 A What's that?

18 Q These are the reports that they wrote up after your
19 conversation.

20 A I was shown none of those.

21 Q Did you prepare with Mr. Dry?

22 A Sure, we had conversations.

23 Q How many times did you prepare between the time that you
24 arrived into town and the time that you hit the stand today?

25 A Once.

1 Q Just once.

2 A Just once.

3 Q Now, you were negotiating for a bonus in July of 2006;
4 correct? That's a Government's exhibit, Exhibit 54.

5 A Okay. That sounds about right. If you could show me the
6 document, I might be able to recollect a little further.

7 MS. GRADY: Sure. Government's Exhibit 54. Can you
8 turn the lights down again? I hate to do that.

9 Q This is the Government's Exhibit 54 which talks about the
10 bonuses; correct?

11 A Yes.

12 Q And you indicated that even though -- you indicated you
13 were entitled to these bonuses regardless of the profit of the
14 company because Mr. Okun was taking the money and investing it
15 in IPofA and wasn't keeping it with 1031 Tax Group; right?

16 A Maybe you could state that question again. I'm not sure I
17 caught the drift of what you are asking.

18 THE COURT: What is the question?

19 MS. GRADY: I'll try to make it simple, Judge.

20 Q You felt you were entitled to this bonus even though your
21 company, 1031 Tax Group, wasn't making a profit.

22 A That's an overstatement. By my contract, I was entitled
23 to a bonus. The only reason why the company was not profitable
24 was because Edward Okun took all the money that would be
25 earning interest.

1 Q And you knew the status of the 1031 accounting because you
2 are the president; right?

3 A Yes.

4 Q And you knew that the accounting in July wasn't good, was
5 it?

6 THE COURT: That the accounting?

7 MS. GRADY: I'm sorry.

8 Q State of the accounts, income, that it wasn't so stable;
9 correct?

10 MR. DRY: Objection, Your Honor. I'm still on form.
11 Are we talking about accounting, or are we talking about
12 profitability?

13 THE COURT: I think you are correct. Why don't you
14 ask it again.

15 Q You knew in July that the profitability of 1031 Tax Group
16 was not good. You say that in the e-mail.

17 A Well, that is twisting what I meant in that e-mail,
18 absolutely. There was profitability in terms of that IPofA
19 owed the 1031 Tax Group not only the exchange funds but that
20 they were going to pay interest to the 1031 Tax Group once
21 these properties were sold. So the profits were locked up
22 because Edward Okun took the money.

23 Q Right. But even at that time, you were demanding and took
24 \$175,000? Sorry, \$150,000, because you didn't want to disrupt
25 payroll?

1 A That's correct. But again, I had no --

2 THE COURT: Wait a minute. That's correct. Let's go
3 on now.

4 Q The bottom sentence that says, we are also using 85,000 to
5 put a deposit on the three condos we are buying, that's condos
6 that the business was buying?

7 A That's correct.

8 Q Those condos were going to house the business of SOS?

9 A That's correct.

10 Q And that was IPofA money that was being put down for SOS's
11 building; right?

12 A This was -- the \$85,000 being put down on the contract was
13 funds from our operating account, not the qualified
14 intermediary.

15 Q It wasn't Mr. Okun's money that came from IPofA?

16 A Eventually IPofA does complete the purchase, but the
17 initial deposit came from the operating account of the 1031 Tax
18 Group.

19 Q You talked about interest a second ago. I'm going to show
20 you what will be Defense Exhibit -- it's an e-mail on
21 August 11. It'll be Defense Exhibit Number 13.

22 MR. DRY: I'd like to see it.

23 Q This e-mail, if you focus down to the bottom part, an
24 e-mail down to yourself -- from Lara Coleman to yourself, Barry
25 Powlishen, indicating that a wire was made to the Citibank

1 operating account of \$500,000.

2 A That's correct.

3 Q That was an interest payment from IPofA to Citibank
4 operating account?

5 A That's correct.

6 Q That was SOS's Citibank account; correct?

7 A I'm not certain at this point whether it was a 1031 Tax
8 Group operating account or Security 1031 operating account, but
9 you can suffice it to say it was an operating account in
10 regards to the qualified intermediaries.

11 Q It's clear, at least on this occasion, interest was being
12 paid on the loan?

13 A Sure. That happened from time to time.

14 MS. GRADY: Your Honor, I would move to introduce
15 that exhibit as Defense Exhibit 13.

16 MR. DRY: No objection to Defendant's 13.

17 THE COURT: Admitted.

18

19 (Defendant's Exhibit 13 admitted.)

20

21 Q Going to the promissory notes, those were introduced by
22 the Government, and you indicated that they were -- that Mr.
23 Okun wanted to backdate them; correct?

24 A That's correct.

25 Q He wanted to backdate them to actually make them reflect

1 when the loan was actually taken?

2 A He wanted to backdate them to the date when the loan was
3 taken, that's correct.

4 MS. GRADY: Sorry, Judge. There's a lot of paper
5 here.

6 Q Mr. Okun was always relaying on West Oaks Mall and
7 Columbus Works to come through with a big profit --

8 MR. DRY: Objection, Your Honor.

9 THE COURT: Sustained.

10 MS. GRADY: Your Honor, he testified about it on
11 direct.

12 THE COURT: Ms. Grady, he cannot testify about what
13 Mr. Okun thought or relied on. He can testify about what he
14 said, but he can't testify about what he relied on, and whether
15 he can testify about what he said is the subject of another
16 issue in the case, but at least I took the objection as to the
17 form of the question.

18 Now, I'm ruling on that one right now. Whether or
19 not there's another objection in the second round, I'll deal
20 with that if and when that comes. You know he can't answer
21 that question.

22 Q As you said yesterday on direct examination, Mr. Okun told
23 you numerous times that he was waiting for West Oaks Mall to be
24 completely profitable, bring the profits back from West Oaks
25 Mall as well as Columbus Works; correct?

1 A Sure, that was one of the things that he told us.

2 Q He told it to you often; correct?

3 A That's correct.

4 Q You knew -- I'm going to go to Government's Exhibit 97.

5 Let's go to the highlighted portion. You indicate in your

6 e-mail that the original plan for the QIs was to become

7 involved in various short-term mezzanine financing while

8 property was TIC-ed out; is that correct?

9 A Well, it depends on what you mean by the original plan.

10 When I knew what was happening with the money or when the QI's

11 were originally purchased?

12 Q Well, it's up to you because the next sentence says, this

13 is the only thing I agreed to. So did you agree or disagree

14 with what you wrote here that you agreed with the mezzanine

15 loans?

16 THE COURT: All right, if you would like to ask

17 questions, that will be fine. If you want to argue, we'll go

18 somewhere else and let you all go somewhere else without

19 witnesses present.

20 MS. GRADY: I'll reframe my question.

21 THE WITNESS. I'm sorry, did you ask a question?

22 THE COURT: No. She's going to start again.

23 Q The original plan was for the QIs to become involved in

24 very short-term mezzanine financing while the property was

25 TIC-ed out. This was the only thing I ever agreed to.

1 A Well, once the monies had already been taken in January,
2 that was the first time it was disclosed to me how the monies
3 were going to be used, and it's at that point -- it's at that
4 point -- I mean I agreed because I was given no choice. The
5 money was already gone and invested.

6 Q And you knew that the plan was to use those loans until
7 the property was TIC-ed out, meaning sold and improved, tenants
8 in common, the money would come back to Mr. Okun, and those
9 loans would be satisfied.

10 A That's what I was told, sure.

11 Q Let's go to the exchange agreements for a minute. You
12 testified on direct that you were -- Government's Exhibit 69.
13 You probably don't have that either, do you? Go to number six
14 on 69, please. This is what the Government had you read. It
15 says, I have some work cut out for me such as unifying our
16 exchange documents.

17 A Uh-huh.

18 Q You agree that that was your job, to unify the exchange
19 agreements?

20 A I was president of the company.

21 Q And as president of the company, you need to make sure
22 that the company is following the exchange agreements; right?

23 A That would be one of my jobs.

24 Q So one of the problems that you had was that the exchange
25 agreements weren't matching what Mr. Okun was doing; right?

1 A Yeah. I knew that.

2 Q At some point, you considered that just a civil liability,
3 didn't you?

4 A I'd say early on, yes, I thought it was just a contractual
5 issue.

6 Q And Mr. Okun, he wanted you to change the exchange
7 agreements, didn't he?

8 A No, not at all. We never had a conversation about the
9 exchange agreements the entire time I was employed.

10 Q Ms. Coleman asked you to change the exchange agreements.

11 A To unify them, yes. We never had a conversation about
12 changing them in any fashion. It was merely for operation of
13 the company. That's it. That's what I'm referring to here.

14 Q Now, you told the members of the jury -- I don't need the
15 exhibit anymore.

16 You told the members of the jury that you were concerned
17 about criminal liability because Mr. Okun wasn't following the
18 exchange agreements.

19 A It wasn't just the fact that the exchange agreements
20 didn't provide for it, because I also began to think that
21 regardless of a memo or what the exchange agreements said, that
22 no amount of documentation would make what was happening right.

23 Q But you made no attempt to change the language, as
24 president, to match what Mr. Okun was doing?

25 A That's correct, because each time was supposed to be the

1 last time.

2 Q But you knew that that wasn't going to be the case; right?

3 A I sure hoped it was going to be, but, no, in theory, it
4 didn't work out that way.

5 Q Even though you knew the next time the borrowing happened,
6 you didn't say to yourself, gee, I think this is a good time
7 for me to change the exchange agreement language so that it
8 matches what the owner of the company is doing?

9 A No. I didn't think that way. As a matter of fact, each
10 borrowing had the exact opposite effect on me.

11 THE COURT: Are you at a point where you can stop
12 your questions?

13 MS. GRADY: Yes, I could, Judge.

14 THE COURT: I think this would be a good time for us
15 to take a morning break. We'll take about 25 minutes.

16

17 (Jury out.)

18

19 THE COURT: Ms. Grady, I'm going to tell you the same
20 thing I told Mr. Dry. You all have a great deal of knowledge
21 about the case, and in your questions, you are making
22 assumptions. If you are going to ask him about changing the
23 exchange agreements, you've got to distinguish about changing
24 the agreements going forward or going backward.

25 You change an agreement going backward, you've got a

1 problem -- without getting the consent of the person. You're
2 going to confuse the jury, and I'm going to tell them that they
3 can't change it going backwards. I don't want to have to get
4 into instructions such as that. Of course it can be changed
5 going backwards if everybody agreed to it, but I don't want you
6 all building in problems by being imprecise in your questions.

7 It is a complex area. You all have generally done a
8 good job keeping it relatively straightforward, but you are
9 sliding into this imprecision, and I don't want to have to do
10 it, and I don't want to interrupt your questioning to
11 straighten it out, and I don't want to have to give
12 instructions on it. Be precise.

13 We'll take 25 minutes. Wait. Oh, yeah, excuse me.
14 Sit down just a minute. That's right. Mr. Dry did it. I
15 learned how to do it.

16 MS. GRADY: Can I sit down too, Judge?

17 THE COURT: Sure.

18 MS. GRADY: Thank you.

19 THE COURT: There's a question about whether the
20 Government wants to file a brief or not in response on the
21 privilege issue. Do you or don't you?

22 MR. DRY: We do, Your Honor.

23 THE COURT: When do you propose to file it?

24 MR. DRY: We'd like to file it Monday morning.

25 THE COURT: Any objection?

1 MR. POLLACK: No, Your Honor.

2 THE COURT: All right. It will be filed Monday
3 morning. We'll now be in recess.

4

5 (Recess taken.)

6

7 THE COURT: Mr. Pajonas, you are under the same oath
8 you took yesterday, or this morning.

9 BY MS. GRADY: (Resuming)

10 Q Going to Government's Exhibit 85, that's the investment
11 policy. If you could put that up on the screen, please. It's
12 already been admitted.

13 This is the investment policy that you and Mr. Zacarias
14 and Mr. Powlishen -- and Mr. Bolton was not present; correct?

15 A That's correct.

16 Q And Mr. Okun, he was present?

17 A No, he was not.

18 Q So this document that's entitled 1031 Tax Group Investment
19 Policy, you are saying that he wasn't present when this
20 document was presented to him?

21 A No. He wasn't present when it was, when it was formed,
22 but he signed it.

23 Q Right. You are saying that he signed this document on the
24 boat the same day he signed the promissory notes?

25 A Right. He agreed to it.

1 THE COURT: And he signed it.

2 THE WITNESS: That's right. That's his signature.

3 Q His signature is -- if you turn to the second page,
4 please. His signature is not dated, though?

5 A Okay.

6 Q And so that's his signature; you know that?

7 A That appears to be his signature.

8 Q It's not one of the stamps that was used by the company?

9 A I saw him sign it on the boat.

10 Q Now, so it was pretty clear, clearly made to him that he
11 could invest up to 25 percent of the float; correct?

12 A Well, that's -- you have to read the whole document to
13 understand what that figure means.

14 Q I understand that, but this document gives permission for
15 Mr. Okun, from his officers in his company, your blessing that
16 he could borrow money?

17 A No, not exactly. We're giving him the appearance that we
18 are, but it requires a majority of people to let him borrow it,
19 and we're saying we're not going to any longer.

20 Q So this permission was another lie that you told to Mr.
21 Okun.

22 A It wasn't a lie.

23 Q Well, this document gives permission to Mr. Okun; correct?

24 A It gives conditional permission.

25 Q But nowhere in here does it say that you three agree that

1 this document really wasn't going to be in effect?

2 A Doesn't say we are going to, either. I would dispute that
3 it's a lie.

4 THE COURT: I think that's enough. Next question.

5 Q Back to clean up a couple of small points. Government's
6 Exhibit 24, this was an e-mail on February 6th --

7 THE CLERK: Has this been admitted?

8 MS. GRADY: It's not been admitted yet.

9 THE COURT: February 6th of what?

10 MS. GRADY: 2006, Your Honor.

11 Q This was -- do you recognize this e-mail?

12 A I do.

13 Q It's an e-mail between yourself, Lara Coleman, sent to
14 both Lara Coleman and Edward Okun; correct?

15 A That's correct.

16 MS. GRADY: Move to introduce -- I don't know how the
17 Court wants to do it. Government's 24.

18 THE COURT: Any objections?

19 MR. DRY: I'll offer it as Government's Exhibit 24.

20 THE COURT: It's admitted.

21

22 (Government's Exhibit 24 admitted.)

23

24 Q This e-mail refers to meeting with accountants today for a
25 second time and strongly considering hiring for auditing and

1 policy procedures; right?

2 A That's correct.

3 Q This was part of the effort to find out the amount of
4 money and document the loans; right?

5 A That's correct.

6 Q It also refers to, in the second paragraph, every time we
7 make a long-term investment in IPofA property.

8 A Uh-huh.

9 Q The "we" that that's referring to in that second sentence,
10 that's "we" of 1031 Tax Group?

11 A What portion of this e-mail are you specifically referring
12 to?

13 Q The second paragraph, last line right above the word
14 thanks, it says, can you please forward me these documents, and
15 let's put procedures in place to make these documents happen
16 every time we make a long-term investment in IPofA property.

17 A Uh-huh.

18 Q That "we" is 1031 Tax Group investing in long-term
19 investments in IPofA property?

20 A That's correct.

21 Q I don't have any more for that. Mr. Dowdall, that was one
22 of the first things you did when you came to the, under the
23 employment of Mr. Okun?

24 THE COURT: What are you talking about? That was not
25 a question.

1 MS. GRADY: I'm sorry, Judge.

2 THE COURT: Mr. Dowdall was one of the first things
3 he did?

4 MS. GRADY: I'm thinking way, way too fast. It's
5 been a long morning. I apologize. I'll rephrase.

6 Q You started working for Mr. Okun when?

7 A I believe it was sometime in October. I don't recall the
8 specific date, but it was before he purchased my company.

9 Q Were you present for the firing of Mr. Dowdall?

10 A Yes, I was.

11 Q And that was the first time you met Mr. Dowdall?

12 A That was.

13 Q And you didn't know what you were going to expect firing
14 somebody you had never met; correct?

15 A I'd say that's a fair assumption.

16 Q So you were the one who asked for the armed security
17 guard?

18 A No, not at all. As a matter of fact, I was embarrassed by
19 it and made apologies to Mr. Dowdall for it.

20 Q Now, as time went by in the spring of 2006, you started
21 putting money in separate accounts in different banks like the
22 Long Island -- State Bank of Long Island; correct?

23 A That's correct.

24 Q You didn't tell Mr. Okun about it?

25 A That's not true.

1 Q You refused to give the money back to him at some point,
2 didn't you?

3 A I refused to give it back directly to IPofA, but I
4 specifically said that I would send the money to fund exchange
5 closings. I believe there's an e-mail documenting that.

6 Q That was actually after your termination?

7 A I believe so.

8 Q So you put client funds in State Bank of Long Island?

9 A Uh-huh.

10 Q And you were terminated?

11 A Uh-huh.

12 Q And you refused to give those client funds unless you had
13 something specific in writing from Mr. Okun; correct?

14 A That would be true.

15 Q And at that point, you were no longer the president of the
16 company whose client funds those were?

17 A That's true.

18 Q Going to one more point, you -- the severance package, you
19 testified that -- well, you didn't testify. Your salary was
20 275,000; correct?

21 A 300,000.

22 Q 300,000. I apologize. And the severance was three months
23 of that; correct?

24 A Like I said previously, that's not my recollection. My
25 recollection is that it was, the severance was a year, but I

1 could be wrong.

2 Q So assuming even that you are right it's at a year,
3 300,000, you went into the negotiations asking for two million?

4 MR. DRY: Already asked and answered.

5 THE COURT: Ms. Grady, I think we've already done
6 this. Why are we getting back into it again?

7 MS. GRADY: I just wanted to clarify one point.

8 THE COURT: Get to the point. In your severance
9 negotiations, did you blank.

10 MS. GRADY: Okay.

11 Q During the severance negotiations, you settled for
12 975,000?

13 A 950,000.

14 Q 950,000. And you indicated that there was a
15 confidentiality agreement.

16 A That's true.

17 Q That was presented to you by Mr. Okun's lawyers?

18 A That's true.

19 Q You have no idea if Mr. Okun authorized or suggested that
20 process happen; correct?

21 A Generally, when somebody is represented by attorneys --

22 Q That's not the question. You do not have any idea whether
23 Mr. Okun told them to do that.

24 MR. DRY: Actually, Your Honor, if she's asking if he
25 had an idea, he's entitled to say generally.

1 THE COURT: Yeah, he is.

2 MS. GRADY: I'm going to rephrase the question then.

3 THE COURT: All right.

4 Q You don't have any specific knowledge on that date from
5 those lawyers whether Mr. Okun suggested that confidentiality
6 agreement.

7 A I'm not sure that I can say no, because they constantly
8 referred to Mr. Okun's wishes all throughout the negotiations.
9 He was represented to me to be in New York at hand that day of
10 the negotiations. As a matter of fact, I was surprised not to
11 see him there.

12 Q How many severance negotiations have you gone through in
13 your life?

14 A Luckily, this is the only one.

15 Q You've left other jobs, though; correct?

16 A Sure.

17 Q You've signed --

18 A I've never been fired, though.

19 Q You've signed other confidentiality agreements; isn't that
20 correct?

21 A No. To my recollection -- I've signed confidentiality
22 agreements in my lifetime, but not -- I don't believe in
23 regards to my employment. I'm thinking of situations of -- I'm
24 sorry. Maybe one or two jobs I did have a confidentiality
25 agreement upon further recollection. I'd say that was true.

1 Q Now, this severance -- you ended up having to sue Mr. Okun
2 in open court for the full payment of this particular severance
3 package?

4 A That's correct.

5 Q That was an open lawsuit where you accused him of not
6 paying the rest of your money.

7 MR. DRY: Objection, relevancy.

8 THE COURT: He objects that it's not relevant.

9 MS. GRADY: The Government alleges that this is some
10 sort of payoff and that they wanted to keep it quiet. This
11 impeaches the witness because he, in fact, made it public
12 knowledge.

13 MR. DRY: Time frame for the lawsuit, Your Honor.

14 THE COURT: I'm not sure it's impeaching, but it
15 might go to credibility.

16 MS. GRADY: The lawsuit is July 17th, 2007.

17 MR. DRY: Renew my objection, Your Honor.

18 THE COURT: Why?

19 MR. DRY: It's after the time frame of the charges in
20 the indictment. I don't understand how Mr. Pajonas suing Mr.
21 Okun after the company was already in bankruptcy is relevant or
22 impeaching.

23 THE COURT: I doubt it is. I'm going to sustain the
24 objection so far. If you lay some foundation.

25 Q You indicated in the severance meeting that your lawyers

1 and Mr. Okun's lawyers wanted to keep this quiet, didn't want
2 to have it make the news; right?

3 A I'd say that's a fair assumption.

4 Q And Mr. Okun paid you pursuant to part of the severance,
5 and then his company ran out of money and he didn't pay the
6 rest of it, did he?

7 A That's correct.

8 Q And --

9 A It wasn't just his company. It was a personal guarantee
10 as well.

11 Q Two months later, you sued him in open court for the rest
12 of that money.

13 A I sued him -- I filed a lawsuit against him, yes.

14 Q Now, let's talk about the last topic at issue which is not
15 at my table here.

16 The search warrant, you weren't working for them then, but
17 the search warrant --

18 A Working?

19 Q You weren't working for Mr. Okun's companies on April 27th
20 of 2007; correct?

21 A No, I was not. I was fired previous to that.

22 Q And you found out about the search warrant; right?

23 A Sure. I mean, it was news.

24 Q And you got a lawyer, and you went to the Government and
25 talked to the Government, didn't you?

1 A Absolutely.

2 Q And before you would even talk to the Government, you
3 signed a piece of paper saying that your words couldn't be used
4 against you in any kind of criminal procedure?

5 A I don't recall signing a piece of paper.

6 Q Well, if I could put up for his -- the proffer agreement.

7 THE CLERK: What exhibit is this?

8 MS. GRADY: It will be a defense exhibit.

9 THE COURT: It hasn't gotten to you just yet.

10 Q Look at the bottom. It's dated June 11th, 2007?

11 A That's right. I did sign this document. It seems so long
12 ago.

13 Q Mr. Martini is the lawyer that you hired to make sure that
14 you weren't criminally prosecuted for the statements that you
15 told the Government about.

16 A I'm not sure I'd --

17 MR. DRY: Objection.

18 THE COURT: What?

19 MR. DRY: Your Honor, I think that's a
20 mischaracterization of the proffer agreement. If she wants him
21 to read the proffer agreement or just say what was your
22 understanding of the proffer agreement, that would be okay.

23 MS. GRADY: I'm going to move the whole document in,
24 Your Honor.

25 THE COURT: Any objection?

1 MR. DRY: No.

2 THE COURT: All right. What is it?

3 MS. GRADY: Defense Exhibit 15.

4 THE COURT: What happened to 14, or does it make a
5 difference? Is there a 14?

6 THE CLERK: Not that I have, Your Honor.

7 MS. GRADY: It was an e-mail, Judge. My focus is on
8 my world. They're telling me there was a 14.

9 THE CLERK: I'm sorry, there was.

10 THE COURT: Is it admitted?

11 THE CLERK: Yes, sir.

12 THE COURT: All right. 15. No objection. It's in.

13

14 (Defendant's Exhibit 15 admitted.)

15

16 Q So this document was entered into, contract or agreement
17 between you and the Government, on June 11th, 2007.

18 A That's correct.

19 Q And it indicates that -- in the first paragraph, if you
20 can focus in on that just a little bit more. It says, in any
21 prosecution brought against client, and that's you; right?

22 A That's correct.

23 Q By the United States, except for prosecution for false
24 statement, obstruction of justice, or perjury, the United
25 States will not offer into evidence any statements made by the

1 client at the meeting -- either at the -- sorry, I'll just read
2 it -- made by client at the meeting (a) in its case in chief,
3 or (b), at sentencing. I read that correctly finally, didn't
4 I?

5 A You read it, yeah, sure.

6 Q That statement to you means that they can't use your
7 statements at that meeting against you.

8 A Right.

9 THE COURT: Ms. Grady, it says exactly they can't use
10 it in the case in chief or at sentencing. You and I both know
11 there's more to a case than just the case in chief. Just let
12 stand for itself. Don't try to extrude its meanings.

13 MS. GRADY: Okay.

14 Q Now, you had -- after this first meeting, you had
15 telephone calls and then four other meetings before you even
16 came to Richmond to testify, right, with the Government?

17 A There was -- as I previously testified, there was a number
18 of meetings at various locations and a telephone call.

19 Q And one of the things that you needed your lawyer to do
20 before you came in and testified to these members of the jury
21 was to get immunity from prosecution in an order from the
22 court; right?

23 A My attorney negotiated on my behalf and felt that it was
24 prudent.

25 MS. GRADY: Can I have the order?

1 Q You probably haven't seen this order. Have you seen this
2 order?

3 A No. I was told of its existence.

4 Q You were told that --

5 MS. GRADY: I would move to introduce Defense
6 Exhibit 16.

7 MR. DRY: No objection.

8 THE COURT: It's admitted.

9

10 (Defendant's Exhibit 16 admitted.)

11

12 Q You said you were told of the existence of this?

13 A By my attorney.

14 Q You wouldn't testify unless this order was in existence;
15 correct?

16 A No, that's not exactly true. It gave me comfort, but I
17 think if the Government refused to give it to me, I would still
18 be testifying here today.

19 Q You knew you had criminal liability back -- you can take
20 that off. You knew you had criminal liability back when you
21 were talking to both Mr. Okun and Ms. Coleman and Mr.
22 Powlishen? You knew, thought you had criminal liability then,
23 didn't you?

24 A I didn't know that then, and I'm not sure I know that now.
25 I was concerned about it.

1 Q You wrote in an e-mail that your family -- you've risked
2 your family, your livelihood, and your freedom?

3 A I was concerned about it, absolutely.

4 Q Did you go to the police then?

5 A Did I go to the police? No, I did not.

6 Q And after that, you continued to work for Mr. Okun?

7 A I'm sorry, what date is that that we're talking about?

8 Q I don't remember the Government e-mail. Suffice it to
9 say, you didn't say that after you left employment; right?

10 A Say what?

11 Q That you were concerned for your family and your freedom.

12 A I didn't say that after I left the employment?

13 Q Right.

14 A I said that probably every day of my life after leaving
15 his employment. I was very concerned.

16 Q And the first time that you went to the Government was
17 after the search warrant, and you went with your criminal
18 lawyer.

19 A I forget when the dates were for the search warrant. I
20 don't recall the dates.

21 Q We talked about it a minute ago, and you agreed it was
22 April 27 of 2006.

23 A Okay. Yeah, it was probably after that, because that's
24 when it all started to come together. They arrested Edward
25 Okun, and that's when I visited with the Government, sure.

1 Q The last thing I'll talk to you about is that you
2 indicated on direct that you refused to carry out anything that
3 Mr. Okun said for you to do as an owner of the company.

4 THE COURT: Now, wait a minute. Come on, Ms. Grady.

5 MS. GRADY: Judge, I'm reading my notes.

6 THE COURT: I don't care what your notes say. Your
7 notes are a truncated version of what was said, and you didn't
8 put it in point of time. Get your question right. He didn't
9 say that. It's okay for you to ask the question if you put it
10 in context and do it right, but that isn't what he said.

11 MS. GRADY: Can we have Government's Exhibit 88?

12 Q It was during the discussion of this e-mail, discussion
13 (sic) 88, that you asked for an update on where we were on some
14 of the solutions and whether there was any West Oaks money
15 slated to come in; right?

16 A That's correct.

17 Q And you indicated that -- pursuant to a Government's
18 question that you were refusing to carry out what Mr. Okun
19 said.

20 A I believe that I very narrowly stated what I was not
21 agreeing with him on. I mean, to say that I wasn't doing
22 anything that he wanted me to do is a gross exaggeration.

23 Q You would agree that you said --

24 THE COURT: Let's don't worry about what he said.

25 The jury is going to remember it, and that's fine. On or after

1 October 4, 2006, did you blank. That's a good way to ask that
2 question.

3 MS. GRADY: Okay.

4 Q On or about October 4th --

5 MS. GRADY: No, I don't think that's the purpose of
6 my question, Judge.

7 THE COURT: All right.

8 Q You refused to change the exchange agreement language to
9 comport to what Edward Okun was doing with the money.

10 A Refusal implies that somebody asked me to do it. Nobody
11 asked me to change the agreements.

12 Q You knew he was doing something in --

13 MR. DRY: Objection, Your Honor. I'm going to ask
14 that she clarify changing the exchange agreements for
15 preexisting funds or post funds that were coming in.

16 MS. GRADY: I'll rephrase the question.

17 Q For all future exchange agreements, going forward, you
18 knew that the behavior of borrowing funds was not in with the
19 language that those exchange agreements said; correct?

20 A That's correct.

21 Q And you knew that Mr. Edward Okun's behavior of borrowing
22 those funds to invest in property was going to continue?

23 A I was specifically advised by Edward Okun each time he
24 took the money that that would be the last time, so I saw no
25 reason to change the documents going forward.

1 Q But each time you heard that, you knew that that wasn't
2 true because Edward Okun continued --

3 THE COURT: Ms. Grady, we've already been through
4 this right before the recess. If you have something else on
5 it, okay. He had the exact same question.

6 Q The short of it is, you did not change the language going
7 forward of the exchange agreements. You refused.

8 MR. DRY: That was asked and answered. He said he
9 did not refuse to do it.

10 THE COURT: Sustained.

11 MS. GRADY: I don't have any other questions.

12 THE COURT: Any redirect?

13 MR. DRY: Very briefly, Your Honor.

14

15 REDIRECT EXAMINATION

16 BY MR. DRY:

17 Q Mr. Pajonas, Ms. Grady asked you about occasional interest
18 payments that were made to 1031 Tax Group; correct?

19 A That's correct.

20 Q Were those made in the ordinary course of business? Was
21 there a payment plan, or was that something that was routinely
22 done?

23 A No. When the company was just about to run out of
24 money --

25 THE COURT: What company?

1 THE WITNESS: I'm sorry. When the qualified
2 intermediaries were just about to run out of money --

3 MS. GRADY: This is not responsive to the question.
4 The question was narrow. It's not responsive to the question.

5 THE COURT: Overruled.

6 Q Go ahead, sir.

7 A When the companies were just about to run out of money and
8 we told them that we had no money left, we would get some money
9 in to cover operations. We had rent, payroll, taxes, things
10 like that that needed to be paid.

11 Q Were there occasionally -- as far as -- do you remember an
12 occasion in which money was put back into 1031 Tax Group from
13 IPofA in which you did not demand that it be done?

14 A Never. Never. The money always came -- the money always
15 came after urgent, urgent requests, and generally speaking, it
16 was much less than we asked for.

17 Q Ms. Grady spoke about changing exchange agreements. Would
18 it have been possible to change the exchange agreements to
19 allow for what had been done with client money in the past
20 without the consent of the clients?

21 A No. They would have to sign off on it. It's a contract.

22 Q Going to Government's Exhibit 24 that I believe was
23 admitted as Defendant's 14 --

24 MR. DRY: Ms. Grady, can you confirm that --

25 THE COURT: I don't think it is. I think

1 Government's 24 was admitted as Government's Exhibit 24.

2 MS. GRADY: Then I stand corrected. It may not be.

3 It may be a jointly named exhibit.

4 THE COURT: It was also admitted as 14?

5 MS. GRADY: Yes, sir.

6 THE COURT: All right.

7 Q Ms. Grady had you read the first sentence. Can we go to
8 the second sentence of that top paragraph? Can you start
9 reading from one of the things that came to mind?

10 A One of the things that came to mind with me, and not so
11 much in the conversation, is that in order to account for the
12 money that has been loaned to IPofA, we should really have
13 documents on hand evidencing those loans.

14 Q That e-mail was to Ms. Coleman and Mr. Okun?

15 A Yes, it was.

16 Q And were those -- in this time frame, February of 2006,
17 the money that had been taken in 2005, which qualified
18 intermediary had that been taken out of?

19 A Atlantic Exchange.

20 Q Were you aware that money was being taken at the time?

21 A No. I was not employed at the time.

22 Q And who were you told was going to document those loans
23 after the fact?

24 A Lara Coleman and --

25 MS. GRADY: Objection, Judge. He's told by somebody

1 else after the fact of when he was employed there. Lack of
2 foundation.

3 MR. DRY: All right.

4 Q In this timeframe, in February of 2006, were you told by
5 anybody that those transfers or loans would be documented?

6 A Actually, I believe that I was advised that they had been
7 documented.

8 Q And who advised you of that?

9 A Edward Okun and Lara Coleman.

10 Q Did you request those documents?

11 A I did.

12 Q Were you provided those documents?

13 A No, I was not.

14 Q Government's Exhibit 178, which has not been introduced
15 into evidence, do you recognize this e-mail?

16 A I do.

17 Q First of all, Ms. Grady mentioned that you were refusing
18 to give money, at the end of November of 2006, to Edward Okun;
19 correct?

20 A Yes.

21 MR. DRY: I'd like to admit Government's Exhibit 178
22 into evidence.

23 MS. GRADY: That's fine, Your Honor.

24 THE COURT: No objection.

25

1 (Government's Exhibit 178 admitted.)

2

3 Q The bottom e-mail, sir, who is that from and who is that
4 to?

5 A The bottom e-mail is from myself to Edward Okun, Lara
6 Coleman, and David Field.

7 Q November 30th of 2006, what happened on that day?

8 A I got fired that day.

9 Q Is this the same day that you had the conversations with
10 all three of these individuals?

11 A Yes, that is true.

12 Q Please read this e-mail, sir.

13 A Ed, if you want me to move the funds from the State Bank
14 of Long Island to the Citibank client escrow account, please
15 fax a formal letter to the office at 877-767-3295 directing me
16 to do so. You own the company, so if you direct me to move the
17 money so that we can pay exchangers, I will do so. You also
18 better hurry with advising me of your plan to resolve this cash
19 crisis. Time is running out. Tick tock, tick tock.

20 THE COURT: What exhibit number was that?

21 MR. DRY: Government's Exhibit 178, Your Honor.
22 Nothing further, Your Honor.

23 THE COURT: All right. Can he be released
24 permanently?

25 MR. DRY: He can be released from the United States'

